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U.S. Department of Justice
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NATIONAL INSTITUTE OF JUSTICE
Issues and Practices

Day Fines in American Courts:

**The Staten Island and
Milwaukee Experiments**

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Day Fines in American Courts: The Staten Island and Milwaukee Experiments

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by

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Douglas C. McDonald, Editor

ACQUISITIONS

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Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Designed for the criminal justice professional, each *Issues and Practices* report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion on the subject. The intent is to provide criminal justice managers and administrators with the information to make informed choices in planning, implementing and improving programs and practice.

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Foreword

Fines, as a method of criminal punishment, are as old as the system of criminal justice, being applied when the offense was not sufficiently serious to warrant incarceration and the offenders presented no grave threat to the community. One problem with fines as punishment, however, lies in making the punishment fit the crime.

The National Institute of Justice (NIJ), as the research and development arm of the U.S. Department of Justice, has studied the application of fines as punishment in appropriate situations and for appropriate offenders. Research has shown that determining what *should* be paid, what *can* be paid, and what *will* be paid is chancy at best.

One outgrowth of NIJ's research has been greater attention to a method of imposing fines that is now well established in several European countries. Known as "day fines," these penalties provide a more logical method of determining the amount of financial punishment to be imposed. Judges first establish how severe an offender's punishment should be. This is then broken down into "units of punishment," each equal to a day's pay for the offender — hence, "day fines."

This publication describes two applications of this concept in the United States—one in New York City, one in Milwaukee. The lessons learned from these court systems should prove valuable to the criminal justice community in other jurisdictions.

Charles B. DeWitt

Director

National Institute of Justice

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Judith A. Greene is Director of Court Programs at the Vera Institute of Justice in New York City. She is responsible for planning and developing the Institute's programs to improve the functioning of the court in pretrial release, sentencing, and administration of intermediate criminal penalties. She led the effort to establish the pilot day-fines project in Staten Island, described in this essay.

Charles Worzella is the former Research Director of Wisconsin Correctional Services, Inc., where he conducted the study of the Milwaukee day-fine experiment. He presently lives in Syracuse, New York, where he is working on his Ph.D.

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Douglas McDonald
Abt Associates Inc.

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Several European experts have also advised this work: Hartmuth Horstkotte, a German Federal Court Judge; Dag Victor, Director of the Penal Legislation Division of the Swedish Ministry of Justice; and research colleagues Silvia Casale and Hans Jorg Albrecht.

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I owe special thanks to three Vera Institute colleagues: Sally Hillsman, upon whose ground-breaking research on fines the pilot project was built, and who worked in partnership with me on the planning effort; Vaughn Jackson, the Staten Island Day-Fines Officer; and Michael Smith, Director of the Institute.

Judith Greene
Vera Institute of Justice

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Part I

INTRODUCTION: THE DAY FINE AS A MEANS OF EXPANDING JUDGES' SENTENCING OPTIONS

Douglas C. McDonald
Abt Associates Inc.

Introduction

Even though a substantial proportion of the more than fourteen million persons arrested each year in the United States are brought before courts for sentencing, and despite the fact that governments have spent several billions during the past decade to create correctional resources for the courts, American judges have remarkably few alternatives for punishing persons convicted of crimes.¹ The principal sanctions can be counted on a few fingers: imprisonment, probation, and fines.

In addition to the small number of available sanctions, judges face several constraints on their ability to use them for purposes of punishment. Prisons and jails are costly, and in many places the demand for empty cells outstrips the supply. In cases where neither the demands of justice nor crime control call for imprisonment, judges face a particularly sharp dilemma if what they seek is punishment. Probation is ill-suited to punishment, because it is primarily intended for the rehabilitation of criminal offenders. Exacting retribution is not seen as its primary mission. This is not to say that judges do not rely upon it for punishment, for they sometimes impose supervision orders as a kind of lesser punishment. However, this often results in an irrational allocation of probation resources and diminishes probation's capacity to focus on offenders most in need of supervision, counseling, treatment, and services.

Fines are more logically suited to punishment. Indeed, the fine is unambiguously punitive. But its use also poses dilemmas for the courts. Many offenders are poor and without obvious means of making money legitimately. Many judges fear that to levy a fine may spur poor people to commit more crime merely to raise the money needed for the fine. Or it may result in somebody other than the offender—a parent, spouse, or other family member—paying the “tax” on the crime. In many courts, fines are also thought to be poorly enforced. If courts lack efficient enforcement abilities, and if offenders can walk away from their obligations easily, the sanction risks being seen as having no teeth, and is thereby drained of any credibility.

The use of fines also poses questions of equal justice. If the principal method of enforcing a fine is to jail the offender for nonpayment, does this not weigh more heavily on poorer people? Why should wealthier offenders escape jail because they have more money, or better access to money? And are not wealthier persons more able to pay fines than persons with little money? One man's weekly salary may be another man's pocket change.

The disproportionate impact of fines on rich and poor defendants is exacerbated by the inability to tailor in a systematic fashion the fine amount to the offender's ability to pay. The conventional method of determining fine amounts in this country is for judges to follow what amounts to a "tariff" schedule established by State or local lawmakers. That is, fine amounts, or ranges of permitted amounts, are prescribed for each type of offense. By fixing the amount to the offense in such a strict manner, differences in the offenders' ability to pay are given little or no consideration.

Several countries in Europe and Latin America have devised new methods of administering fines that aim to overcome these apparent shortcomings. Called *day fines*, these sanctions provide a more precise way of calibrating the fine both to the gravity of the offense and to the offender's ability to pay. The general concept is a simple one: determining the amount of punishment to be administered to an offender is separated from the consideration of how much money that offender must pay. Judges first determine how much punishment an offender deserves; then this is denominated in some unit other than money. How these *punishment units* are then translated into monetary terms depends upon how much money the offender makes. One way of making such a translation is to consider one unit of punishment to equal one day's pay, or some fraction of a day's pay. (Hence, the term *day fine*.) Consequently, a sentence of five punishment units, or five days' pay, will involve a large sum of money for high-income offenders and a smaller sum for poorer people. Punishment is then made more equal: the fine paid is more precisely tailored to offenders' different abilities to pay.

The day fine is thought to have other advantages as well, beyond its appeal as a means of distributing punishments more equally among offenders. If fines are better scaled to offenders' ability to pay, they may be paid more often and more fully. If the fine is allowed to find its level based strictly upon the offenders' ability to pay, and is not capped by maximum dollar amounts specified in statutes, the courts may acquire a powerful means of imposing extremely burdensome fines on wealthy persons who are now protected by these caps.

The concept of the day fine is a relatively simple one. Somewhat more complex are the translation of the concept into practice and evaluating whether the day fine is a feasible, useful, and appropriate addition to the courts' repertoire of sanctions. The two essays that follow describe the earliest day-fine experiments in this country, the first being in Staten Island's Criminal Court, followed by a similar one in Milwaukee's Municipal Court.

In 1987, the National Institute of Justice awarded funds to the Vera Institute of Justice for the first development and testing of a day-fine system in the United States in Staten Island, New York.² As Judith Greene reports, Judge Rose McBrien of the Staten Island (New York) Criminal Court imposed the first day

fine in this country on August 12, 1988, after lengthy preparation by that court and the Vera Institute of Justice, a private organization that has pioneered a number of innovative practices in the New York City Courts. This day-fine experiment grew out of earlier research that the Vera Institute had undertaken, with National Institute of Justice (NIJ) support, assessing the use of the fine as a criminal sanction.³ Throughout the past decade, the National Institute of Justice has funded a series of complementary studies regarding the effective use of fines as criminal penalties leading up to the current Bureau of Justice Assistance-funded program on structured fines and NIJ's evaluation of the structured fine programs.⁴

Charles Worzella's essay reports on Milwaukee's experience with day fines. In late 1989, the city's Municipal Court undertook a twelve-week experiment to use day fines in cases where offenders had been charged with violating city ordinances. This court is a high-volume one, processing over 100,000 cases of municipal violations each year. This experiment was devised in a joint public/private collaboration between the courts, various other parties to the court, and staff of Wisconsin Correctional Services Inc., a private organization that has developed a number of other services for the Milwaukee courts.

Each of the essays describes how the day fine was put into operation in these two courts, and they begin to provide information about its feasibility and usefulness. Before turning to those essays, however, a concise discussion of several key issues is presented below, partly to serve as a road map to the materials covered by Greene and Worzella in their essays. One set of issues concerns policies and procedures for implementing day fines. The second set of questions are evaluative: what do the experiences of Staten Island and Milwaukee tell us about the potential feasibility and usefulness of the day fine in American courts?

Putting the Day Fine into Operation

Instituting day-fine procedures requires resolving several different problems. The courts must first define a unit of punishment other than days or years behind bars or dollars to be paid. They must then establish the number, or range, of units to be imposed upon persons convicted of all types of offenses. A calculus then has to be developed that permits the court to translate these punishment units into dollars. Fines need to be collected, and the sanction enforced. Because all courts now have a well-developed machinery for determining, imposing, and enforcing criminal fines, developing procedures for administering day fines requires changing—or, at least, accommodating—existing habits, customs, and laws. Courts do not have the luxury of devising new procedures unconstrained by past and current practices. How these practices and statutory constraints are accommodated pose some of the most difficult problems for the development of day-fine procedures.

Defining punishment units

At the heart of the day-fine concept is the notion that one can rank the comparative gravity of all offenses and can assign each offense a number of common units that reflects this ranking. Ranking offenses is not foreign to the courts. All penal codes currently in existence in this country specify the relative gravity of the offense, if only by establishing the sentence that may be imposed upon conviction. In some states, criminal laws have been codified so that the relative ranking of offense seriousness is made even more explicit.

Ranking the relative gravity of crimes is easier than determining whether one crime should be ranked as being twice, or three times, or four times as serious as another, however. Lawmakers have generally avoided having to make these determinations and have instead established broad ranges of permissible punishments, leaving the determination of individual sentences to judges. One needs to create a yardstick that has enough units on it to permit making a sufficiently fine distinction among all offenses (because these will ultimately be translated into penalties). Ultimately, the choice of the unit and the permitted range is an arbitrary one.*

Determining how many punishment units to assign to each type of offense involves a process similar to that of developing sentencing guidelines. That is, the required judgments are essentially normative. Some body authorized to make the decision (an appointed commission or a group of judges) must reach a consensus about how many punishment units each convicted person deserves. This body needs also to consider a number of associated questions, such as whether to prescribe a range of punishment units, or a "presumptive" number of units to be imposed; whether to prescribe the variations in punishment units prescribed for aggravating and mitigating factors; and whether to permit the punishment units to reflect considerations of the offenders' character, such as their prior criminal history. In reaching these decisions, the day-fine designers can rely on past practices for guidance (as reflected in the average number of imprisonment days or fine amounts imposed for particular types of offenses, for example), or upon more reasoned penological considerations that may be reflected in established sentencing guidelines or criminal law codifications that have been promulgated in the state.

In Staten Island, the judges and the planning group chose a scale for the lower courts that contained 120 day-fine units and established ranges of recommended units for each of the offenses brought before the court. For example, the range recommended for petit larceny was 5 to 60 day-fine units; for sexual misconduct, 90-120 units; for harassment, 15 units; for prostitution, 5 units. Where ranges were specified, courts were given guidance in how to establish more precisely the number of recommended units. For example, the units deserved by someone convicted of petit larceny were determined by the value of the property stolen.

In Milwaukee, the courts chose to take as a starting point the maximum and minimum dollar amounts permitted by the city ordinance for fines authorized to be imposed upon conviction of specified charges, and translated those into day-fine units. They also chose to adopt as the "presumptive" number of units a number that was derived from past practice: that is, the dollar amount that could be paid if the violator chose not to contest the charge in court.

Establishing the dollar value of each unit

An essential feature of the day fine is that the dollar value of the imposed punishment—the fine—reflects offenders' ability to pay as well as the offense for which they were convicted. Day-fine systems therefore require a method of turning units into dollars that capture offenders' differing abilities to pay. In Germany, as Judith Greene reports, one unit is valued as an offender's average daily income, after taxes. In Sweden, the unit is calculated as 1000th of the offender's average discretionary income—that which the offender could afford to give up if one adopted "strict economy"—with adjustments for taxes, debts, and assets. In Staten Island, the court and project planners adopted a formula that valued the unit in accordance with the offender's net daily income, with adjustments for family responsibilities (i.e., number of dependents) and for poverty. A similar formula was developed for use in the Milwaukee courts.

This brief description obscures some more complex policy and operational problems that have to be resolved in translating units to dollar amounts, several of which are discussed by Judith Greene in her essay. For example, planners for the Staten Island experiment had to decide how to factor in offenders' wealth as well as their income in figuring their ability to pay. Decisions were made also to adjust valuation formulae for offenders' poverty and lack of income, as well as for "off the books" income and money derived from criminal activities. Procedures and policies also had to be developed for obtaining information about offenders' means and for the use of that information by other parties.

Collection and enforcement

Day fines could be collected and enforced in the same manner as any other type of fine. In the Staten Island experiment, however, the courts strengthened its collection and enforcement machinery. Rather than relying upon its overburdened system for issuing and serving bench warrants for nonpayment, the court established a day-fines officer, who was given special responsibility for attending to offenders ordered to pay a day fine. Compliance was monitored closely, and nonpayers were contacted by phone and by mail. This more personalized and close supervision would, it was hoped, result in higher rates of payment for day fines than for conventionally administered fines. The Milwaukee program, in contrast, did not experiment with different collection and enforcement strategies.

Assessing the Usefulness of Day Fines

Whether or not a day-fine system is, on balance, to be preferred depends in large part upon its effect on court operations and on the offenders themselves—especially their willingness to comply with their legal obligations to pay. The two experiments reported do not provide a definitive test of the concept, but do begin to provide answers to several of the most important questions.

Are day fines feasible, and will courts use them if they have a choice?

Both the Staten Island and the Milwaukee experience indicate that a workable day-fine system can be developed for regular use in courts. In both places, efficient procedures were established so that fine administration could be accomplished without slowing the normal pace of court operations. In Staten Island 70 percent of all fines imposed during the year following the implementation of the project were day fines. Because judges were not required to use the day fine in lieu of the conventional fine, this high rate of use attests to the level of judicial acceptance. (In Milwaukee judges on the municipal court agreed to impose only day fines during the experimental period, so they were given no choice to “vote” for one or the other form.)

The evidence from Staten Island also suggests that judges were not dissuaded from using fines in favor of other types of sentences following the introduction of day fines. There was some reduction in the number of cases involving drugs and contraband receiving fines as sentences, but this was probably due to an independent trend of cracking down on drug offenders. In Milwaukee the fine was nearly the only sanction available to the municipal court, so there was no evidence of judges substituting other sanctions for fines.

Was the collection rate improved?

In Staten Island there was a high rate of compliance with court orders to pay the newly implemented day fines. During the first year of the program, 70 percent of all offenders given day fines paid their amounts in full. A small number had their fines modified and were discharged from their obligation to pay the full amount. Warrants needed to be issued for 13 percent of all fined offenders, and 10 percent of all closed cases were ultimately jailed for default. Some others still had open cases at the time the data were collected in preparation for writing this essay.

How this compared with the collection rate for conventionally administered fines is not reported in Greene's essay, except she does write that the collection rates “do not appear to have been diminished.” Because there was not a control group given conventional fines, the Vera Institute's evaluators could not compare collection rates precisely. In contrast, the Milwaukee demonstration was de-

signed as a controlled experiment, with violators sentenced one week to day fines and those sentenced in alternating weeks to conventionally administered fines. The results regarding collection rates were mixed. The proportions failing to pay their fines differed little (59 percent versus 61 percent of those given day fines and conventional fines, respectively). However, those given day fines were more likely to pay in full (37 percent versus 25 percent). Differences in likelihood to pay were even more pronounced among the poorest violators. Of those persons having monthly incomes less than \$197, thirty-three percent of those given day fines paid in full, compared to 14 percent of those given conventional fines.

Do day fines have a stronger crime-control effect?

Evaluators of the Milwaukee experiment tracked subsequent contact with the criminal justice system by following violators given day fines and those given conventional fines to see if there was any apparent difference in recidivism. Within nine months of being sentenced—the period that the evaluators observed—there was no significant difference between the experimental and control populations in the proportions of repeated arrests (34 and 33 percent, respectively).

That day fines do not reduce recidivism should not be seen as a negative result. Fines are administered in many, if not most, instances for the purpose of imposing a punishment. Punishment is typically backward-looking—that is, sanctions are imposed because the offender is seen as deserving of punishment because of his or her violation. The courts may hope that this retributive action also has a utilitarian benefit, such as the deterrence of future criminality, but the absence of such a benefit does not leave the fine without justification or purpose. In both Staten Island and Milwaukee, the use of fines, including day fines, was conceived of primarily as a punishment rather than a crime-control strategy, and there is no indication that the failure of the day fine to reduce recidivism was met with any concern.

Are there other significant social costs incurred by the use of day fines?

In Milwaukee, the use of day fines reduced revenues to the country treasury, which created resistance to their continued use. The average fine amount imposed and paid was lower under the day-fine system—as might be expected given the plethora of poor defendants coming before the municipal court. This was unwelcome news in a jurisdiction that was having budget difficulties at the time of the experiment.

Staten Island's experience may not have been the same, although the data are not entirely clear on that account. Prior to the introduction of the day fine in that

county's court, the average fine imposed was \$226. During the first year of the pilot project, the average fine amount increased 8 percent, to \$246. However, not all fines imposed during that first year were day fines. Greene, in her essay, does not distinguish between the average day fine and the average amount for all conventional fines imposed during this period, which would afford a clearer picture of this matter.

Enhancing government revenues by means of fines was not a primary purpose of the day-fine experiment in either Milwaukee or Staten Island. Moreover, it is important to understand that day fines need not necessarily produce a decline in revenues. Both experiments were conducted in the lowest-level courts and were designed to test the effect of scaling punishment to offenders' ability to pay. No attempt was made in Milwaukee to strengthen fine enforcement procedures. As described by Greene, the Staten Island experiment developed a variety of such procedures that could have been adopted by the Milwaukee courts, which might have changed the revenue results. The Milwaukee courts could also have changed the way punishment units were valued in dollars. That is, how much each unit was worth in dollar terms is a matter of choice and policy; one could manipulate these values to produce different levels of fines and thereby increase revenues. Experimentation is needed to find the optimal balance between fine amounts imposed, fines actually paid, and revenues.

Both the Milwaukee and Staten Island courts were also constrained by another fact, which may affect revenues, and that needs to be addressed in future experiments to implement day fines: statutes typically establish upper limits on the size of fines that can be imposed for various kinds of offenses. The income of high earners is thereby protected by these statutory caps. If such caps are eliminated, and if the assessment of day fines is permitted to occur unfettered, fine revenues may increase substantially. This is especially likely to happen if day fines are used in the higher courts. Persons committing grave offenses could be subject to dramatically larger fines.

Both the Staten Island and the Milwaukee experiments occurred in lower courts. There is no inherent reason why day fines cannot be used more expansively in the higher courts. Indeed, it can be argued that the day fine will rationalize the administration of fines so that they can be used more frequently in the higher courts to deliver punishment. As several have pointed out, the German courts chose to expand greatly the use of fines for serious offenses and have used day-fine procedures to facilitate this. Similar practices could be adopted in American courts.

Endnotes

1. There were an estimated 13,812,300 arrests in the United States during 1988, according to the FBI. *Crime in the United States: Uniform Crime Reports, 1990*, (Washington, D.C.: Government Printing Office, 1991) p. 174. Between 1971 and 1985, State and local governments spent \$9.85 billion for prison and jail renovation and construction. Douglas C. McDonald, "The Cost of Corrections: In Search of the Bottom Line," *Research in Corrections* 2 (February 1989): 12.
2. National Institute of Justice, *The Effects of Instituting Means-Based Fines in a Criminal Court: The Staten Island Day-Fine Experiment*, reported by Laura A. Winterfield and Sally T. Hillsman, Final Report, September 1991.
3. National Institute of Justice, *Fines & Sentencing: A Study of the Use of the Fine as a Criminal Sanction*, reported by Sally T. Hillsman, Joyce L. Sichel and Barry Mahoney (Washington, D.C.: Government Printing Office, 1984); National Institute of Justice, *The Enforcement of Fines as Criminal Sanctions: The English Experience and Its Relevance to American Practice*, (Washington, D.C.: Government Printing Office, 1986).
4. In addition to the studies cited above in endnote 3, NIJ has funded the following: National Institute of Justice, *The Practices and Attitudes of Trial Court Judges Regarding Fines as a Criminal Sanction*, reported by George F. Cole, Barry Mahoney, Marlene Thornton and Roger A. Hanson (Washington, D.C.: Government Printing Office, 1987); National Institute of Justice, *Use and Effectiveness of Fines, Jail, and Probation in Municipal Courts*, reported by Daniel Glaser and Margaret A. Gordon, Final Report, November 1988; National Institute of Justice, *Office of Justice Programs, Fiscal Year 1991 Program Plan*, (Washington, D.C.: Government Printing Office, 1991); National Institute of Justice, *Structured Fines: An Impact Evaluation*, report in progress by RAND Corporation.

Part II

THE STATEN ISLAND DAY-FINE EXPERIMENT

Judith Greene

Introduction

In August 1988, judges in the Criminal Court of Richmond County, which is coterminous with the New York City borough of Staten Island, began the first systematic use of day fines in American courts. Initially developed in Scandinavia in the 1920s and 1930s, and then introduced to Germany in the late 1960s and early 1970s as a substitute for short terms of incarceration, the day fine involves a simple two-step process in setting fine amounts that embraces the principles of proportionality and equity that are traditional in both European and American sentencing jurisprudence.¹

First, the court sentences the offender to a certain number of day-fine units (e.g., 15, 60, 120 units) according to the gravity of the offense, but without regard to his or her means. Then the value of each unit is set at a share of the offender's daily income (hence the name *day fine*), and the total fine amount is determined by simple multiplication. The percentage share of income used in valuing the day-fine units varies across the different countries which use this system, as do methods for accounting for the offender's family responsibilities or capital wealth, but the basic idea assures routine imposition of equitable fine sentences, the punitive impact of which is in proportion to the crime.

This essay recounts briefly the story of how the European day fine was modified for use by the American criminal courts and tested in the Staten Island Criminal Court, one of the five boroughs of New York City. This practice holds great promise for remedying several problems associated with the current American procedures for administering fines. To facilitate efforts by other jurisdictions to develop their own day-fine policies, the following pages discuss how this innovation can improve criminal sanctioning practices, and how several important policy and design issues were resolved by those involved in the Staten Island experiment. The essay then turns to an examination of preliminary data on its use, and of the effectiveness of the day fine in Staten Island compared to the traditional practice.

The Beginnings of the Staten Island Day-Fine Experiment

Judge Rose McBrien's imposition of the first American day fine on August 12, 1988 culminated nearly a decade of research, and more than a year of planning and development with the court by the Vera Institute of Justice, a private organization in New York City.² Working in close collaboration with the bench and bar in Staten Island, the Vera Institute's planners designed and implemented

for the courts a new framework for imposing and administering criminal fines. In addition to the Vera Institute's staff, the day-fines planning group included three judges, the district attorney's criminal court bureau chief, and representatives of both the private defense bar and the Legal Aid Society (the city's public defender organization). The innovation was tested by the court during an initial pilot year to demonstrate the feasibility of the day-fine technique in a busy, urban American court system. This one-year experiment was closely monitored by Vera staff to measure the impact of the reform.

The Impetus Behind the Reform: Problems in the Current American Use of Fines as a Criminal Sanction

In current American practice, fines are simply imposed as a flat dollar amount in each case. This *fixed-sum fining system* tends to result in courts having informal tariff systems, or "going rates," for specific offenses. Approximately the same dollar amount is imposed for offenders convicted of the same or similar offenses, regardless of the economic circumstances of a specific individual in a particular case. Given the large number of low-income offenders sentenced daily in our State court systems, these flat dollar fine amounts tend to cluster at the bottom of the legislated ranges.

One defect of the fixed-sum fine is that it gives an obvious advantage to offenders with relatively higher income levels over those who are disadvantaged by their poverty. When fined an equal sum for similar crimes, the disparate punitive impact of the fine among these offender groups is seen to distort the principle of proportionality in sentencing.

A second deficiency is that judges may be reluctant to fine those who are poor, either because of concern about inequities or because they may think nonpayment is likely. So limited in their ability to fine, judges are left with few other sanctions.

A third problem is that the traditional practice of setting fine amounts at the lowest common denominator tends to restrict the use of fines to the least serious categories of offenses. Low statutory fine ceilings often reinforce this tendency, especially given that fine amounts are often found to cluster near the bottom of the permissible ranges. Because fine amounts are depressed in this fashion, many judges have concluded that the degree of punishment deliverable by fines is severely limited.

On the other hand, where legislation has mandated relatively large fixed-sum fine amounts for specific offenses (for example, for drug law offenses in Arizona and New Jersey) many judges have become skeptical about their ability to effectively enforce these fines against the poor.

Comparison with practices in several Western European countries reveals how limited current American usage is. Especially in Northern Europe, the fine is the primary noncustodial penalty, systematically imposed across a broad range of common criminal offenses.³

This country's restricted fine usage is not due to a clear policy preference for such practice. Evidence compiled by researchers who have studied the use of this sanction in the American court system indicates that although the restricted use of fines for only minor or petty offenses is the typical pattern, many courts are already using fines for a broad range of nontrivial offenses. Legislative initiatives at both the State and Federal levels to raise statutory fine maxima are succeeding, thus inviting still broader application of the fine to some types of crimes that now commonly draw jail terms and to offenders who may now be issued fines that are less punitive than might be appropriate because existing "tariff" systems make it hard to increase their fine amount.

Researchers involved in National Institute of Justice-supported studies of the role of fines in sentencing (at the Vera Institute and elsewhere) have theorized that the apparent underutilization of fines in American sentencing practices is primarily due to the rigidity of the fixed-sum fining system.⁴ Accordingly, the remedy for the apparent underuse of the fine in American courts, and to inequities associated with the fixed-sum fine, is to develop some mechanism for systematically linking the fine to the offender's ability to pay. This has been the central contribution of the European day-fine practice, which is why the Vera Institute and the Staten Island courts used it as a model for reform.

The Promise of the Day-Fine Technique

The day fine offers a means of rescuing the criminal fine from its relatively limited use. By separating the gravity of the offense from the offender's ability to pay, and by developing systematic and easy-to-administer techniques for linking them, the day fine permits both a more equitable use of the fine, and a more widespread use as well, across a broader range of criminal offenses and offenders. So freed from the bounds of current practice, the fine may be permitted to play a much more important role in criminal sanctioning. Fines have certain inherent advantages. While admittedly less severe than incarceration, the criminal fine has an unmistakably punitive impact on the offender. Moreover, its message is unambiguously punitive. This fits comfortably with penalty systems that stress offender accountability. When fined, the offender quite literally is made to pay his or her debt to society. When the fine can be flexibly adjusted to fit both the gravity of the offense and the offender's means (as day fines permit), it does not destroy the offender's ties to family and community. It can also be an important source of revenue and does not require the resources of additional administrative agencies for implementation.

Recent research conducted both in this country and in Europe gives evidence that imposing fines as punishment may also enhance deterrence. In research performed at the Max Planck Institut in Freiburg to track the impact of implementation of the day-fine technique in Germany, Hans-Jorg Albrecht compared the recidivism of offenders sentenced to day fines with those sentenced to short terms of incarceration. For first offenders tracked over a five-year period, those who had been fined were far less likely to re-offend than those who had been jailed (16 percent for those fined, compared with 50 percent for those incarcerated). Although the available data did not allow for comparison of randomized groups of offenders, when statistical tests were performed which allowed researchers to control the data for variables such as type and severity of offense, prior record, age, and social class of offenders, a clear advantage for fines over both probation and jailing in terms of recidivism was established for property crimes such as theft and fraud.⁵

In this country, Daniel Glaser and Margaret Gordon have conducted a multivariate analysis of the recidivism of offenders sentenced to various combinations of probation, jail and monetary penalties by judges of the Los Angeles Municipal Court. Their findings show evidence that—again, as in Europe—when offenders with like criminal records are compared, financial penalties are associated with lower recidivism rates than either probation alone or incarceration.⁶

The Potential of the Day Fine for Expanding the Use of Monetary Sanctions

An indication of how adoption of the day-fine technique can expand the use of fines in criminal cases can be seen in the dramatic results such adoption had in the Federal Republic of Germany. In 1969 the West Germans revised their penal code. The number of offenders being sentenced to prison had been far exceeding available capacity, and the high court had held that the practice of triple-celling was unconstitutional. In response, the legislative reform established the principle that short terms of imprisonment (terms of six months or less) should only be used in exceptional cases—and that fines should become the normal sentence for cases that were then drawing short terms of incarceration. Within two years the West German courts, following the code revision, had reduced the use of sentences under six months from 113,273 to 23,664 per year. The use of fines was increased from 63 to 84 percent of all sentences. Between 1968 and 1971 the proportion of incarcerative sentences meted out by West German judges fell from 23 to 7 percent, while the incarceration rate fell from approximately 100 prisoners per 100,000 population to 66 per 100,000.

To ease this shift, the 1969 legislative reform provided for a conversion of what was then a fixed-sum fining system to a model based on the Scandinavian day-fine technique. The West German version, although arguably less elegant and

precise than the better-known Swedish system, has proven its usefulness in holding default to acceptably low levels—and fines have continued to comprise more than 80 percent of all sentences meted out by the courts each year, while the use of short-term imprisonment and overall incarceration rates have continued to decline. In 1984 only 10,155 terms of under six months duration were meted out by the West German courts.

While such a radical and broad sentencing policy shift in this country is unlikely, the West German experience with implementation of the day-fine technique nonetheless gives strong evidence that the introduction of a systematic approach that assures both equity and efficiency could enable a greatly expanded (if not leading) role for the criminal fine in American sentencing practice as an intermediate sanction—especially in courts which do not now use fines for a broad range of criminal cases.

Designing and Implementing a Day-Fine System for the Staten Island Court

To test the use of the day fine in an American court, staff at the Vera Institute of Justice turned to the Richmond County Criminal Court in Staten Island. Vera Institute planners chose this as the setting for the pilot project because it most typifies, of all the boroughs of New York City, a middle-sized, suburban American community. Data collected by planners described a stable social setting with a relatively sound economic base, but with a substantial crime problem, and a sizable resident population characterized by poverty and unemployment.

Richmond County is the eleventh most populated county in the State of New York (370,600 people in 1984) and is the fifth most densely populated (5,986 persons per square mile). Racially homogeneous relative to the city's other four boroughs, it has a minority population of 11 percent (compared to a State average of nearly 25 percent). Overall, the economic status of Staten Island's residents exceeds State and National averages. Its per capita individual income in 1984 was \$12,433; and its mean family income was \$25,795 in 1980. Nevertheless, there are pockets of economic need. In 1984, the unemployment rate was 6.3 percent, and approximately 7.2 percent of its households received public assistance.

The New York City Police Department recorded 18,944 Index crimes reported in Staten Island in 1986. The county's crime rate of 5,435 Index crimes per 100,000 population in 1984 ranked Richmond fifth of all counties in the State of New York. Its robbery rate was 292 (also ranked fifth) and its burglary rate was 1,223 (ranked ninth). In 1986, the Staten Island police made 2,628 felony arrests and 3,628 misdemeanor arrests; 6,947 cases were filed in the Staten Island Criminal Court (30 percent of which were felonies) and 6,740 cases were disposed.⁷

The day-fines project chose to limit its focus to the trial court of limited jurisdiction in Staten Island. This was done to assure that the results of this innovation would be broadly useful to American court systems where lower courts have traditionally been the primary users of fines. Moreover, as a court of original jurisdiction, the Staten Island Criminal Court arraigns and processes all felony cases before indictment. Because case screening is vigorous at the lower level, many of these felony cases are retained by the court for dispositions as misdemeanors. A 1986 sample of criminal court cases analyzed for the planning effort revealed that almost three-quarters of all cases charged by prosecutors as

felonies remained in the lower court for final disposition. Thus, the planners of the day-fine adaptation were confident that this court's cases would provide a broad range, both in type and severity of offense.

The Project's Goals

The planning group sought to both enhance the credibility of the fine and strengthen its potential as an intermediate sanction by adoption of the day-fine technique. To be credible, the fine had to be efficiently collected and enforced. The techniques for assessing the fine should involve procedures that are flexible and that will not delay the pace of litigation or add significantly to the daily workload of court officials.

To achieve this, the project's planners devised a scheme that included the following elements:

1. a system of sentencing benchmarks (numerical guidelines) that proposed a specific number of day-fine units for each criminal offense within the full range of conviction charges common to cases disposed in this court,
2. a system for collecting the necessary information for all offenders on their ability to pay,
3. policy guidelines and easy-to-use methods for establishing the value of each day-fine unit imposed on a particular offender,
4. strategic improvements in the court's collection and enforcement system, and
5. a microcomputer-based information system that automates and records collection and enforcement activities.

A Structural Framework for the American Day Fine

The German and Swedish day-fine procedures provided the Staten Island planning group with two different models that could be adapted for American use.

The structure of the German system now in use reflects its genesis as part of a broader policy-driven shift away from short-term imprisonment. The basic organization is a very broad range of day-fine units, from 5 to 360, roughly but logically linked to a term of imprisonment for which the day fine is seen as a substitute. The number of units imposed in a given case is assessed according to the gravity of the offense. (It is this figure—rather than the total monetary value of the fine—which is often set in relation to localized informal tariffs). The German day-fine statute recommends that the value of the day-fine unit be based

on the average net income the defendant has (or could have—when an offender is unemployed, the German judge may assess the day fine on potential earnings), with a minimum set at 2 DM to a maximum of 10,000 DM (about \$1.20 to \$6,000).

In setting the unit value at the net daily income, German judges have tended to preserve a day's-wages-for-a-jail-day exchange economy that stems from the original purpose of the reform (a "ransom" for jail time). This exchange is further underscored by the statutory rule that, in cases of default, one day-fine unit must correspond to one day of imprisonment for nonpayment. In contrast, the Swedish day-fine technique, developed in the early 1920s to provide a remedy to the inherent inequity of the fixed-sum fining system, is constructed on the basis of a narrower range of 1 to 120 units (180 for multiple offenses), with a method of assessing its value, within a narrow range of 10 to 1000 Kr (about \$1.70 to \$170), based on a rough accounting of the offender's annual discretionary income—that is, the amount that the offender could afford to give up when practicing "strict economy" in his or her spending habits.⁸ This figure is then divided by 1000 (reducing the amount to approximately one-third of the offender's daily discretionary income) and then variously adjusted for taxes, capital wealth, and significant debts. The concept embodied here—*economic jail*—is essentially one of relative economic deprivation for the duration of time warranted by the gravity of the offense. The provisions for conversion of the day fine to jail time, in the event of default, set forth a sliding scale which begins at 10 days imprisonment for 5 day-fine units, but runs to only 90 days imprisonment for 180 day fines.

Consistent with its purpose of displacing incarcerative sentences, the German day-fine system provides a more severe scale of punitive impact: the maximum allowable fine is 3,600,000 DM, well over \$2,000,000 U.S., compared to a maximum of about \$20,000 U.S. in Sweden. And by adopting a standard of net daily income in determining the value of a day-fine unit, rather than the more lenient Swedish rule of "strict economy," the Germans have chosen a method that is likely to result in far stiffer fines.

A comparison of sentencing statistics for the two countries indicates that, as might follow from these design differences, day fines appear to be used more broadly among certain nontrivial offense categories in Germany. For example, while about one-half of all property offenses receive fines in Sweden, three-quarters are fined in Germany. Similarly, two-thirds of all German crimes involving violence against persons are fined, while half are so sanctioned in Sweden.⁹

Assigning Units to Crimes

Because conversion from traditional fixed-sum fines to day fines would entail replacing the old "going-rate" tariff system in Staten Island's courts with a new

set of reference points (a unit-rate system), a system of *benchmark scales* was devised for use in determining the number of day-fine units that would be appropriate for the charges facing an individual defendant.¹⁰

Because the criminal court has limited jurisdiction for adjudication of cases below the felony level, the planning group thought it appropriate to structure the range of day-fine units to allow for later use at the felony level. Supposing that a range of 1 to 360 day-fine units would offer sufficient flexibility for the full range of conviction charges eligible for a fine sentence under the New York State Penal Code (from violations through felonies), the planning group decided that the range for misdemeanors should be capped at 120 day-fine units.

A sample of penal law cases disposed in the court during a six-month period was studied to determine the range of penal code charges commonly handled by the court. Seventy-one specific charges found to have occurred frequently in the sample were then rank-ordered by the planning group according to consensus judgments regarding the seriousness of the criminal behaviors represented by the "normal" case patterns associated with these charges in the daily dispositional routine.¹¹ To facilitate discrimination among specific cases, certain code charges that were found to cover a broadly varied range of actual criminal conduct were broken down into subcategories. For example, four categories of misdemeanor assaults were distinguished according to the gravity of the injury—substantial or minor—and the nature of the victim.

Each offense was then assigned a presumptive number of day-fine units within the scale, ranging from a low of 5 units for the most minor offenses, to a high of 120 for the most severe. Further, each offense was provided with a discount and a premium number of units to give additional flexibility and to encourage judicial discretion in accounting for the mitigating or aggravating circumstances that may be present in individual cases. The resulting table of severity-scaled conviction charges—the "Day-Fine Benchmark Scales"—was then rearranged by order of their penal law numbers (for quick access) and distributed to the bench and bar in workbook format for use during the disposition of cases resulting in a fine sentence (see tables 1 and 2).

The benchmark scales were devised and adopted by the planning group to provide judges with a common reference point when choosing the number of penalty units to be imposed in a given case. Adherence to them is entirely voluntary—as is the use of the day-fine technique altogether. These simple sentencing standards were not conceived to be applied as, nor are they perceived as being, sentencing guidelines in the formal sense. Moreover, they do not govern—or even guide—the judge's choice of sanction in a given case. Once the choice has been to fine, however, the scales provide a workable structure that—coupled with the valuation procedures detailed below—replaces the informal dollar-amount tariffs of past practice with a fair and consistent framework for assessing proportional and equitable fine amounts.

Table 1
Broad Classification of Penal Law Offenses into Staten Island Day-Fine Benchmark Severity Levels (Partial List)

Severity Level/ Penal Law Number	Behavior	Offense and Degree	Day-Fine Units
Level 1 (95-120 Day-Fine Units):			
130.20 AM	Harm persons	Sexual misconduct	90-120 DF
120.00 AM	Harm persons	Assault 3	20- 95 DF
Level 2 (65-90 Day-Fine Units):			
260.10 AM	Harm persons	Endangerment of child welfare	20- 90 DF
215.50 AM	Obstruction of justice	Criminal contempt 2	75 DF
120.20 AM	Harm persons	Reckless endangerment 2	65 DF
110-155.30 AM	Property	Attempted grand larceny 4	20- 65 DF
Level 3 (45-60 Day-Fine Units):			
265.01 AM	Weapons	Possession of weapon 4	35- 60 DF
155.25 AM	Property	Petit larceny	5- 60 DF
165.40 AM	Property	Possession of stolen property 5	5- 60 DF
165.05 AM	Property	Unauthorized use of a vehicle	5- 60 DF
221.40 AM	Drugs	Sale of marijuana 4	50 DF
225.05 AM	Misconduct	Promotion of gambling 2	50 DF
220.03 AM	Drugs	Possession of contraband substance 7	35- 50 DF
110-120.00 BM	Harm persons	Attempted assault 3	10- 45 DF
Level 4 (30-40 Day-Fine Units):			
170.05 AM	Theft	Forgery 3	40 DF
221.15 AM	Drugs	Possession of marijuana 4	35 DF
110-140.15 BM	Property	Attempted criminal trespass 2	30 DF
245.00 BM	Sex crime	Public lewdness	30 DF
110-155.25 BM	Property	Attempted petit larceny	5- 30 DF
110-165.40 BM	Property	Attempted possession of stolen property 5	5- 30 DF
Level 5 (15-25 Day-Fine Units):			
240.37A AM	Sex crime	Loitering/prostitution	25 DF
205.30 AM	Obstruction of justice	Resisting arrest	25 DF
110-221.40 BM	Drugs	Attempted sale of marijuana 4	25 DF
110-265.01 BM	Weapons	Attempted possession of weapon 4	5- 25 DF
110-120.20 BM	Harm persons	Attempted reckless endangerment 2	20 DF
140.10 BM	Property	Criminal trespass 3	20 DF
240.25 VIO	Misconduct	Harassment	15 DF
Level 6 (5-10 Day-Fine Units):			
165.09 AM	Property	Auto stripping 2	10 DF
221.10 BM	Drugs	Possession of marijuana 5	5 DF
230.00 BM	Sex crime	Prostitution	5 DF
190.05 BM	Theft	Issuing bad check	5 DF
240.36 BM	Misconduct	Loitering 1	5 DF
140.05 VIO	Property	Trespass	5 DF
240.20 VIO	Misconduct	Disorderly conduct	5 DF

Source: Sally Hillsman, "Fines and Day Fines," in *Crime and Justice: A Review of Research*, vol. 12, edited by Michael Tonry and Norval Morris. (Chicago: University of Chicago Press, 1990).
 Note: AM = A misdemeanor; BM = B misdemeanor; VIO = violation.

Table 2
Day-Fine Benchmarks
(Partial)

	Discount Number	Benchmark Number	Premium Number
<u>Offenses Involving Harm to Persons:</u>			
<u>120.00 AM Assault 3</u>			
Range of 20-95 Day-Fine Units			
A. <u>Substantial Injury</u> Stranger to stranger; or, where victim is known to assailant, he/she is weaker, vulnerable.	81	<u>95</u>	109
B. <u>Minor Injury</u> Stranger to stranger; or, where victim is known to assailant, he/she is weaker, vulnerable; or altercations involving use of weapon.	59	<u>70</u>	81
C. <u>Substantial Injury</u> Altercations among acquaintances; brawls.	38	<u>45</u>	52
D. <u>Minor Injury</u> Altercations among acquaintances; brawls.	17	<u>20</u>	23
<u>Property and Theft Offenses:</u>			
<u>155.25 AM Petit Larceny</u>			
Range of 5-60 Day-Fine Units			
\$1000 or more	51	<u>60</u>	69
\$700-999	42	<u>50</u>	58
\$500-699	34	<u>40</u>	46
\$300-499	25	<u>30</u>	35
\$150-299	17	<u>20</u>	23
\$50-149	8	<u>10</u>	12
\$1-49	4	<u>5</u>	6

Source: Sally T. Hillsman and Judith A. Greene, *Improving the Use and Administration of Criminal Fines: A Report of the Richmond County, New York, Criminal Courts Day-Fine Planning Project*, (New York: Vera Institute of Justice, 1987).

Matching Day-Fine Units to the Offender's Ability to Pay

In a day-fine system, the value of a day-fine unit must be set in direct relation to the offender's economic means. The procedures chosen to value units will determine the degree of punitive "bite" that will be imposed at sentencing in each case. A variety of policy issues and practical considerations are posed in designing a format for quickly assessing the means of individual offenders and translating this information into a "fair-share" penalty-unit value to be used in calculating the specific day-fine dollar amount to be levied.

Balancing Privacy Rights against the Court's Need to Know

The requirement that the court have adequate information about the offender's means has often been cited as the primary stumbling block to the introduction of the day-fine technique. While it is true that in Sweden the system of day fines is bolstered by the court's legal access to tax records for checking the means information volunteered by offenders, in Swedish practice this access is rarely invoked, and day-fine units are routinely valued according to self-reported income information. In Germany, where by law tax information is not directly available to the court, the lack of such formal legal recourse has not been a barrier to successful introduction of the day-fine technique. Some information as to employment status, occupation, and living circumstances is available to German judges from police records. This is supplemented by a brief oral investigation conducted by the judge at the beginning of each case. Defendants are asked about their income (on a monthly net basis), their marital status, and their dependents. In most cases this information is simply and directly translated into a specific day-fine value figure.

The reliability of this self-reported information is another area of concern. Both Swedish and German officials report a high degree of confidence that, in most situations, information they are given by most offenders is accurate. German court officials do complain, however, that those offenders with higher incomes—particularly self-employed professionals and business people—tend to be less than candid and often appear to underreport their income. In these cases, statutory power given to judges to assess *de facto* the income of offenders can be brought into play and can be used by the judge to tease a more realistic report from the reluctant offender. Ultimately in such cases, the judge may simply announce a day-fine value based on a "best guess" method. As day-fine sentences are appealed quite rarely, it appears that these assessment powers are either used with judicious restraint or tempered by the defendant's cooperation when faced with a generous best guess by the judge.

Under current American law the Internal Revenue Service is not permitted to disclose income tax information to the court for the purpose of sentencing.¹² In

addition, Federal and State privacy laws generally prohibit financial institutions from disclosing information without consent.

Nevertheless, the Staten Island court is not totally without power to determine an offender's financial status. New York law presupposes an active fact-finding process during sentencing. The state's criminal procedure law sets forth a legal basis for presentence investigations of virtually unlimited scope, including "the defendant's social history, employment history, family situation, economic status, education, and personal habits."¹³ Although some types of personal records and documents are protected under the Fifth Amendment, in many situations financial and business records lose this privilege. For example, financial records may be subpoenaed from the offender's accountant.¹⁴ The court can compel an offender's attorney to produce financial working papers prepared by his or her accountant.¹⁵ Moreover, an offender's business records are not protected, even if he or she is a sole proprietor.¹⁶

The means interview

A review of existing court practice prior to the pilot introduction of the day-fine technique revealed that quite a bit of self-reported information about most defendants' means was already being supplied to the Staten Island court through a pretrial interview report developed by the New York City Criminal Justice Agency (CJA), the city's pretrial services agency. This agency's investigation is routinely performed for all defendants taken into police custody at arrest to inform the court about each defendant's prospects for successful pretrial release. The resulting report includes self-reported (and often verified) data on employment: length of employment; full- or part-time status; the name, address and telephone number of employer; job position and shift worked; hours worked per week; and take-home pay. If the defendant is unemployed, the report discloses the duration of unemployment and discloses whether he or she has ever worked or is disabled. If the defendant is in school or enrolled in a training program, this is noted. Other sources of income are identified such as parents, welfare, SSI and unemployment compensation.

Additional relevant information is provided about the defendant's household circumstances and financial responsibilities. The defendant's address is given, and the people who live with him or her are described (i.e., whether spouse or common-law partner, parents, grandparents, legal guardians, children, other relatives, or friends). Any dependents who are supported by the defendant are noted.

Much of the basic income information needed by the Staten Island court to convert to the day-fine system was consequently already available to the court at sentencing. What was needed was to extend the interview process to include defendants who had not been taken into police custody at arrest, but rather, were

reporting for arraignment under New York City's Desk Appearance Ticket system (citation release).

Policies regarding indigence and wealth

The problem of fining allegedly indigent offenders has long been a concern for American judges, especially since the early 1970s when a series of Supreme Court cases took up the issue of equal protection as it relates to offenders with low incomes. Because no widely accepted standard for defining indigence has yet emerged even at the appellate court level, the issue is not an easy one to approach in discussions of policy development.

Some would argue that the poor should not be fined at all. Yet research findings indicate that many low-income offenders are routinely and successfully fined in the American courts.¹⁷ And, given the lack of humane alternatives in many court jurisdictions, the results of such a blanket prohibition may be harsh indeed: offenders may be jailed only because the court presumes that they cannot be fined. Acknowledging that the totally destitute offender cannot be fined, it still may be argued that most low-income offenders are capable of some financial payment provided their fines can be scaled appropriately to their resources (as with utilization of a day-fine technique), and provided that careful attention is given to devising strict but reasonable installment payment schedules.

The Staten Island planning group adopted the view that all defendants with a steady income stream (even if this is supplied by welfare payments, unemployment, or disability income) are capable of being fined under a means-based fining system. It was determined that the value of the day-fine unit should be based—for all offenders—on daily net income, adjusted as necessary for basic personal needs and family responsibilities. Planners were aware, however, that the impact of a criminal fine—even when means-adjusted—will fall more harshly on low-income offenders, especially those supporting a family unit on AFDC and others living on fixed incomes, than on those who find themselves in more robust economic circumstances (who are also more likely to have ready access to credit or pools of saved assets). The solution to this problem was to devise a valuation formula that would allow an extra discount of income shelter for those living in poverty.

Offenders whose financial circumstances or capital assets place them at the other end of the economic scale pose other problems for policy. Even though, in theory, procedures can be developed to take into account the economic resources of offenders at the high end of the scale, it still bears repeating that the scaling of the day fine to means cannot, in itself, assure that the impact of the fine will be uniform for all. While application of the day-fine technique will probably produce rough equity among most offenders—and provide a great measure of remedy for the inequities inherent in the fixed-sum fining system—those who can

easily pay a sizable fine from savings or liquid capital will certainly still feel a milder sting than those whose more modest means will require a regimen of stringent economy to pay off their fine.

In Sweden, the rule for taking capital assets into account is not to count personal and real property valued below 200,000 Kr (about \$33,540 U.S.). The day-fine unit is adjusted upward by 5 Kr (about 80 cents) for the first 200,000 Kr, and an additional 5 Kr for every 100,000 Kr above that level. Interest or rental income derived from property or investments should have already been accounted for in assessing the offender's net income.

A method to account for wealth and property and to adjust the value of a day-fine unit accordingly will certainly become necessary if the Staten Island experiment is extended to the felony courts—where the bulk of white-collar defendants charged with offenses involving substantial economic crimes are handled. Cases of that type—and such defendants—are rare in the criminal court. Because fine sentences for misdemeanors and violations are currently subject to very low statutory maxima, the planning group chose to defer development of such a formula.

To provide a quick-and-easy method for valuation that could nonetheless incorporate the standardized framework of discounts and adjustments required, the planning group determined that the valuation formula would need to be boiled down into an IRS-like “tax-table” format that would array net daily income down one axis and the number of persons supported by the offender's income stream across the other.

A simple approach to adjusting net income for personal needs and family support responsibilities was taken from a working paper on structuring fines which had been prepared for (though not adopted by) the United States Sentencing Guidelines Commission. The method was derived from practices in common use by State court judges to assess child support payments to be paid by a noncustodial parent. Net monthly income is adjusted downward by a factor of 15 percent for the offender's self-support, 15 percent for the needs of a spouse, 15 percent for the first child, 10 percent for each of the next two children, and 5 percent for each additional child.

A second adjustment—a flat-rate, across-the-board discount factor of one-third off—was next built into the valuation table to help assure that the resulting fine amounts would represent the punitive bite that the planning group deemed appropriate. In dry-run applications of the day-fine technique to actual Staten Island cases, the planning group felt that the resulting day-fine amounts would have been too harsh in comparison to the informal tariff fine amounts that were prevailing in “normal” cases before the reform. To provide an extra measure of shelter from the harsh impact of stiff fines for those offenders living in poverty,

planners chose to increase the discount to 50 percent for those offenders whose incomes fall below U.S. Department of Health and Human Services poverty income guidelines (see table 3).¹⁸

To determine the proper day-fine amount in a given case, the judge—having first determined the number of penalty units to be imposed using the benchmark scales for guidance—determines the daily net income figure (take-home pay, welfare allotment, unemployment compensation check) and divides that amount by the appropriate number of days in a payment period. Locating that figure on the left-hand axis of the valuation table, the judge then counts across the table to the right the number of columns in that row that represents the number of persons supported by the offender's income, and records the dollar value in the applicable cell. That value figure is then multiplied by the number of units imposed to calculate the full dollar-amount of the day fine.

Both the benchmark scales and the value table were assembled in workbook format with a worksheet to facilitate training. Supplemental information about regional salaries (drawn from Bureau of Labor Statistics reports) and income tax withholdings are included in the workbook to assist judges in fairly assessing a day fine for the temporarily unemployed offender. These workbook materials were made available to all staff of the court and were widely distributed to members of the private bar and to the public media to help familiarize all concerned with the dimensions and workings of the experiment.

In addition to providing these easy-to-use tools, two Vera Institute staff members were stationed in the court to facilitate the introduction of the new techniques. The staff of the Vera Day-Fines Office provided a means interview for those defendants not interviewed by the pretrial agency. To speed the court's handling of day-fine cases, the staff provided a means information sheet attached to each set of court docket sheets which contained a precalculated day-fine unit value figure for each interviewed defendant. The judges need only choose the number of units to be imposed and multiply the day-fine dollar amount—using a pocket calculator provided on each bench by the project. The day-fines office staff also provided the court with assistance in tracking day-fine cases and in collecting and enforcing the penalty.

Valuing underground and criminal income

The issue of accounting for illegitimately acquired income presented the planning group with yet another challenge. To assess fairly the true net income of offenders, it is necessary to go beyond legitimate wage-stub evidence of financial means. The underground economy—be it from off-the-books employment or from criminal gains—supports a substantial proportion of those who come before the criminal courts. While this type of income is not easily documented, a judge must develop a feel for the defendant's true income that can be tapped for payment when setting the fine amount.

Table 3
Dollar Value of One Day-Fine Unit by Net Daily Income and Number of Dependents

Net Daily Income (\$)	Number of Dependents (Including Self)							
	1	2	3	4	5	6	7	8
3	1.28	1.05	.83	.68	.53	.45	.37	.30
4	1.70	1.40	1.10	.90	.70	.60	.50	.40
5	2.13	1.75	1.38	1.13	.88	.75	.62	.50
6	2.55	2.10	1.65	1.35	1.05	.90	.75	.60
7	2.98	2.45	1.93	1.58	1.23	1.05	.87	.70
8	3.40	2.80	2.20	1.80	1.40	1.20	1.00	.80
9	3.83	3.15	2.48	2.03	1.58	1.35	1.12	.90
10	4.25	3.50	2.75	2.25	1.75	1.50	1.25	1.00
11	4.68	3.85	3.03	2.47	1.93	1.65	1.37	1.10
12	5.10	4.20	3.30	2.70	2.10	1.80	1.50	1.20
13	5.53	4.55	3.58	2.93	2.28	1.95	1.62	1.30
14	7.85	4.90	3.85	3.15	2.45	2.10	1.75	1.40
15	8.42	5.25	4.13	3.38	2.63	2.25	1.87	1.50
16	8.98	5.60	4.40	3.60	2.80	2.40	2.00	1.60
17	9.54	5.95	4.68	3.83	2.98	2.55	2.12	1.70
18	10.10	6.30	4.95	4.05	3.15	2.70	2.25	1.80
19	10.66	8.78	5.23	4.28	3.33	2.85	2.37	1.90
20	11.22	9.24	5.50	4.50	3.50	3.00	2.50	2.00
46	25.81	21.25	16.70	13.66	10.63	9.11	7.59	4.60
47	26.37	21.71	17.06	13.96	10.86	9.31	7.75	4.70
48	26.93	22.18	17.42	14.26	11.09	9.50	7.92	6.34
49	27.49	22.64	17.79	14.55	11.32	9.70	8.08	6.47
50	28.05	23.10	18.15	14.85	11.55	9.90	8.25	6.60
51	28.61	23.56	18.51	15.15	11.78	10.10	8.41	6.73
52	29.17	24.02	18.88	15.44	12.01	10.30	8.58	6.86
53	29.73	24.49	19.24	15.74	12.24	10.49	8.74	7.00
54	30.29	24.95	19.60	16.04	12.47	10.69	8.91	7.13
55	30.86	25.41	19.97	16.34	12.71	10.89	9.07	7.26
96	53.86	44.35	34.85	28.51	22.18	19.01	15.84	12.67
97	54.42	44.81	35.21	28.81	22.41	19.21	16.00	12.80
98	54.98	45.28	35.57	29.11	22.64	19.40	16.17	12.94
99	55.54	45.74	35.94	29.40	22.87	19.60	16.33	13.07
100	56.10	46.20	36.30	29.70	23.10	19.80	16.50	13.20

Source: Sally Hillsman, "Fines and Day Fines," in *Crime and Justice: A Review of Research*, vol. 12, edited by Michael Tonry and Norval Morris, (Chicago: University of Chicago Press, 1990).

To do this requires a shrewd eye for evidence of the offender's life-style: his or her personal appearance and dress, criminal record, as well as answers to questions about personal habits. Perhaps some conclusions can be drawn from whether the defendant has made bail or secured the services of a private attorney. For most offenders with illegitimate income, assessment is not so complicated that it cannot be accomplished within the routine process. Application to a small percentage of defendants (such as those charged with such crimes as price fixing, business fraud or embezzlement) occasionally requires techniques such as those commonly used by law enforcement to conduct net worth investigations (where information is gathered to corroborate evidence of guilt by proving that a defendant's expenses exceed his or her lawful income) or in cases involving criminal forfeiture.

The planning group took as its working assumption that the power of the judge to assess an offender's economic resources independently of what he or she has claimed it to be was an inherent power, which is routinely exercised in the daily business of setting bail and assessing whether or not counsel should be assigned at cost to the state. They felt that this power could be extended in practice—as in Germany—to an assessment of "potential income" for the purpose of sentencing an offender to a specific day-fine amount.

Long-standing sentencing patterns in the Staten Island court had established the appropriateness of stiff fines for certain classes of offenders whose crimes are economically motivated, such as small-time professional gamblers and seasonal street vendors of firecrackers. Under the day-fine system, judges were not hesitant to estimate a relatively high unit value for use in calculating day-fine dollar amounts in such cases.

Other classes of profit-motivated offenders were seen by some as less appropriate for an assessment directly based on estimates of illegal income. In cases involving street prostitutes, for example, many judges believe that to levy the fine on an estimate of income derived from this illegal industry tends to reduce the court's role to that of a "state pimp." One Staten Island judge prefers, when she does not use the sanction of jail, to base a day fine for such an offender on an estimate of the wages commanded by those employed in Staten Island's domestic labor market—a new career path she exhorts each fined prostitute to consider.

On balance, the planning group felt that determination of whether or when to fine in cases involving illegal market crimes (including petty drug peddling) was best left to the traditional discretion of individual judges—but members of the group agreed that the task of estimating a reasonably appropriate unit value for calculation of the day fine (in any such case where a fine was seen as an appropriate penalty choice) should present no great difficulty for an experienced criminal court judge.

Offenders' dependents and dependent offenders

Having devised a formulation to shelter at least some share of a defendant's income for support of other household members, the planning group also took up the opposite issue: the extent to which the income of other members of the household should be taken into account in setting the value of the day fine. There are several possible positions one can take on this matter. One is that the court already takes all household income into account in determining the level of resources available to the defendant when setting bail and determining the appointment of assigned counsel. In assessing the appropriate value of a day fine for a dependent offender (e.g., a nonworking spouse or a young unemployed offender who lives on support provided by his or her family), the assumption about household income could be similar. All household income would be added together, with deductions made for each family member just as if the fine were being assessed for the head of the household.

Others may prefer to set the value of the day fine on only that portion of family income that can be identified as comprising support for the offender, admittedly not an easy task. Still others may argue that fines are inappropriate for dependent offenders whose families are able and willing to pay, and that some other sentence should be imposed in these cases.

The primary difficulty with the first approach is that the whole household is held to suffer for the misdeeds of the culpable member. At the same time, it has been vigorously argued by some—including some members of the planning group—that this is also the frequent consequence of other sentencing options (does not the family suffer when a member is jailed?) and that the household's response to this deprivation may constitute an informal but nonetheless potent exercise of social control on the offender's subsequent behavior.

An array of other similar issues cluster around this dilemma: What about the part-time employment income of dependent young adults? The employed, independent young adult who still lives in the family home? The student living away at college who still depends on family income for support? The unemployed, able-bodied teenager, who could—given the ample supply of low-skill fast-food job opportunities in Staten Island—easily obtain work, but who (despite parental pressure) has not done so.

None of these questions, however, are confined to the business of determining a proper day-fine amount. The imposition of monetary sanctions—both fines and restitution—has long been common for the types of Staten Island offenders to be found within this array of economic situations. The issues raised here are not new, but were only newly highlighted, as court officials worked their way through the policy-review process that had been stimulated by the task of devising new and better methods for doing their normal business. Moreover, these issues are

debatable—and a definitive determination of “correct” practice is probably not to be accomplished within the scope of a day-fine pilot planning exercise.

The planning group felt it sufficient to state that one conceptually sound approach for consideration was that unemployed, full-time homemakers, dependent students, and disabled adults could be fairly fined on the basis of family income. This prescription is based on the concept that—by choice of the family or by necessity—they are fully dependent upon the family’s income stream. For the cases of other unemployed adults living within families or other households, however, the planning group commended the German practice of basing the day-fine unit value on an estimation of the individual’s earning potential.

Collection and Enforcement

No measures taken to reform or restructure the use of fines in criminal sentencing will be effective unless serious attention is paid to the business of collection. Fines that go unpaid lack punitive value, and judges will quickly lose confidence if real difficulties with collection become apparent. If the potential of the fine as an effective intermediate sanction is to be tapped, no task is more central than the structuring of a strict and effective system for fines enforcement.

Research conducted for the National Institute of Justice by the Vera Institute in the early 1980s revealed that the collection rate for fines in New York City courts of limited jurisdiction was reasonably high. Three-quarters of the money imposed as fines were collected within one year of sentencing, despite the relatively inefficient method normally used for collection then and now: cases are calendared for appearance dates when payment is due, and a bench warrant is issued for each offender who fails to appear.

In planning the day-fine experiment, the planning group was determined to assure that the introduction of new techniques for imposing fines would not diminish the court’s good record in collecting revenues. And, given the opportunity to provide additional staff to the project, planners decided to test a variety of alternative, more individualized contact with offenders, including more rapid follow-ups with notifications and warnings (without using bench warrants), to examine the circumstances surrounding nonpayment, and to making provisions aimed at encouraging compliance.

Establishing appropriate time frames for payment

Earlier research had shown that in the New York City courts, most offenders were not able to pay their fines at sentencing. Citywide the proportion who paid on a sampled day was 19 percent; in Staten Island the proportion was 14 percent.¹⁹ Because use of a day-fine technique was thought to likely lead to an increase in the amount of many fines (which, indeed, turned out to be true), the planning

group assumed that this pattern was not likely to change. The need for installment or deferred payment plans was consequently evident. The existing practice amounted to an *ad hoc* installment system in the bulk of cases, but project planners were aware that greater efficiency could be obtained if measures were taken to maximize the likelihood of full payment in the shortest possible period.

A key element would be the designation of one person attached to the court with responsibility for collection and enforcement. When responsibility for monitoring fine collection is spread among several individuals, and when little individualized attention is paid to offender compliance, a lack of clear accountability exists, which creates a disincentive to efficient collection. To centralize responsibility for collection, the project created a new role, the day-fines officer. Judges agreed to delegate to this officer sufficient authority to enforce payment by offenders, as well as to give them the tools needed to enable routine and close monitoring of their compliance. A computerized offender-based tracking system to ensure close and continuous supervision of fine payments was developed somewhat inexpensively by customizing a data-base management program that is commercially marketed for small-business applications. The system is used to automate routine notification efforts, and makes it possible to identify nonpayers immediately, which permits a swift and personalized response. These arrangements for proper organization and oversight helped to make reasonable time-payment provisions workable.

To test the usefulness of these new collection strategies, the cases of offenders who received fine sentences during the pilot year were assigned randomly into two separate groups for collection. One group was handled by the court clerks using the traditional collection methods; the second group was referred directly to the project's Day-Fines Office to work out the specifics of an installment plan. The day-fines officer then took responsibility for collecting and enforcing these fines.

Installment plans were geared toward short time frames (no more than three months in most cases) with payment dates set in relation to an individual's income patterns (e.g., the first workday after payday). However, when dealing with a low-income offender (defined as living below the U.S. Department of Health and Human Services poverty income guidelines), a special installment plan for payment was devised by applying the same method used by public assistance agencies when recouping welfare over-payments from their clients. In New York City, the standard rate for withholding in cases of over-payment is 10 percent of the basic grant; the same percentage is used to compute the amount of the monthly fine payment for offenders living below the poverty line.

Enforcement measures

When an offender strays out of compliance with the payment terms set in the installment contract, the day-fines officer has recourse to a variety of measures.

Warning letters—a sensible but rarely used measure—have been found to be effective with a significant share of offenders by the few American and English courts that do use them, and were consequently adopted by the project. A tracking system based on a personal computer is programmed to automate the production of both reminders and warning letters.

Direct telephone contact with nonpayers often surfaces information that sets the enforcement effort on the most effective track in particular cases. When the offender's financial circumstances are found to have changed (or when it becomes evident that more lenient time-payment provisions will be effective in exacting full payment), the day-fines officer has authority to modify the payment plan within parameters set by the court.

Clearly the threat of jailing for default is an important dimension for successful enforcement. But recourse to this measure should, both for reasons of fairness and public policy, be reserved for the willful defaulter. The day-fines officer's efforts to investigate the circumstances of default for each non-payer greatly assist the court's task of sorting between willful defaulters and those for whom some accommodation should be made. When nonpayment can be traced to legitimate difficulties in meeting even reduced payment schedules, the day-fines officer is able to recommend utilization of resources available to the court for supervision of a community service order in lieu of the day fine. When community service presents a hardship (e.g., for a person with full-time childcare responsibilities), the case is returned to the court for revaluation of the day fine, which may result in the remission of all or part of the fine amount.

Armed with the type of monitoring and supervision capacity described above, cases of willful nonpayment can be quickly identified. The initiation of procedures to incarcerate these offenders often results in fines being paid in full, and the numbers of offenders who have actually been jailed has been relatively small, as will be seen below.

Typical Offenders

Receiving Day Fines: Some Illustrations

The following case summaries represent typical examples of the offenders who have received a day-fine sentence during the first year of pilot operations. The names of these offenders have been changed, but all other information has been drawn from project files and court records of actual cases.

RICHARD SMITH

Richard Smith was prosecuted for threatening a police officer and resisting arrest. When stopped for a traffic violation, he told the

officer that he knew where he and his family lived and threatened to "get" him. When placed under arrest, he refused to be handcuffed. He was arraigned for resisting arrest (an A misdemeanor); harassment (a violation); and disorderly conduct (also a violation). He pleaded guilty to disorderly conduct.

Mr. Smith is 20 years old. He is single and lives with his mother. He works at the City Department of Transportation, where his take-home pay is \$800 every two weeks. He is self-supporting and reported no dependents.

Mr. Smith was sentenced to pay a five-unit day fine. His unit value was fixed at \$32.00, for a total fine of \$160—which he paid in full at sentencing.

JOSEPH BURKE

Joseph Burke was prosecuted for stealing a car. He was arraigned for grand larceny (a class E felony); possession of stolen property (a class E felony); and unauthorized use of an auto (a class A misdemeanor). He pleaded guilty to attempted unauthorized use of an auto (a class B misdemeanor).

Mr. Burke is 21 years old. He is single and lives with his mother, to whom he contributes support. He works at a restaurant and reports take-home pay of \$180 per week. He was sentenced to pay a ten-unit day fine, and his unit value was set at \$11.78. His fine totals \$115. He was given an installment schedule for payment and has paid his fine in five payments over three months.

LOUIS MARTINI

Louis Martini was prosecuted for falsely reporting the theft of a car in order to defraud his insurance company. He was arraigned on a charge of insurance fraud (a class D felony) and pleaded guilty to making a punishable false written statement (a class A misdemeanor).

Mr. Martini is 30 years old. He is married and lives with his wife and three children in a home they own. At his arraignment he claimed to be unemployed, but he was represented by private counsel, and it seemed apparent to the judge that Mr. Martini was not indigent and had significant assets. The judge suggested that he return to court with tax records so that a fair day-fine unit value could be estimated in his case.

He was then sentenced to pay a 40-unit day fine. On the basis of his tax records (which showed an annual income of about \$35,000), the judge estimated his unit value at \$23.10—resulting in a total fine of \$924. Although he continued to assert that he was unemployed, Mr. Martini paid his day fine in full on the day he was sentenced.

ROBERT SILVER

Robert Silver was prosecuted for trying to prevent the arrest of his brother and for possession of a pellet gun. He was arraigned for obstructing governmental administration (a class A misdemeanor) and a related administrative code violation. He pleaded guilty to disorderly conduct (a violation).

Mr. Silver is 23 years old. He lives with his brother. When he was arrested, he was working as a stock clerk in a store, but at sentencing he said he was unemployed and living on savings. The judge assumed he could easily find another job and estimated his potential income at about \$6.00 per hour.

Mr. Silver was sentenced to pay a five-unit day fine with a unit value set at \$19.64—for a total amount of \$100. He paid the day fine in two installments over a period of a month.

Impact of the Reform on Sentencing Practice and Revenues Derived from Fines

The primary goal of the one-year pilot project was to demonstrate the feasibility of the day-fine concept as a replacement for the fixed-sum fines traditionally utilized in American sentencing practice. It was hoped that an empirical test of the utility of new techniques for administering fines would produce answers to several questions.

1. Will these new procedures create an incentive (or a disincentive) for selecting the fine as a sentencing option?
2. What impact do day fines have on fine revenues?
3. Will judges use the day-fine method to differentiate between fined offenders on the basis of their means, rather than "fudging" by manipulating the new procedures to replicate existing informal tariffs—i.e., retaining the established "going rates" for specific offenses?
4. Will the day-fine method cause shifts in who gets fined, measured by the severity of the offense and the type of charge?

The Staten Island day-fine experiment completed one full year of pilot operations in August 1989. A review of preliminary data gives evidence that introduction of the day-fine system has resulted in a more just use of fines in sentencing criminal offenders. Because collection rates do not appear to have been diminished, it also indicates that the amount of the city's general-fund revenues derived from fines will significantly increase under the new system. The findings also indicate that revenues would have risen by nearly 80 percent if current statutory fine maxima (fixed at relatively low levels) had not prevented Staten Island judges from utilizing the day-fine system to its full impact in determining fine amounts. (New York Penal Code section 80.05 sets the maximum fine amounts for use by criminal court judges at \$1000 for an A misdemeanor, \$500 for a B misdemeanor, and \$250 for a violation. These maxima, set in 1965 and not adjusted for inflation, required judges to cap many fine amounts below the dollar amounts which resulted from using the day-fine method.)

During the first year of pilot operations, 267 day fines were imposed as sentences for penal law offenses disposed in the court. These day fines represented 70 percent of all penal law fine sentences imposed. The high proportion of day fines

indicates that the basic features of the day-fine system are workable. It suggests further that, as the day-fine system is refined and court officials become more familiar with its operation, the day fine can completely replace fixed-sum fines in penal law cases.

Comparisons with Prior Sentencing Patterns

To track the results of the newly instituted day-fine technique and to aid in refining and streamlining the new procedures, project managers have collected data about each fine case imposed during the one-year test period from court records. To assure that this developmental effort was realistically grounded in practice, basic data were also collected from court calendars for all penal law cases that resulted in fixed-sum fines during a six-month period shortly before the new day-fine system was initiated. This pretest sample is comprised of 175 fines that were recorded on the calendars of the court's arraignment and all-purpose parts between November 21, 1987 to May 20, 1988. Simple comparisons of these two sets of fine case data offer an array of empirical evidence that illuminates some of the shifts in fine usage which have occurred since the introduction of the day-fine system. By comparing these data, it is also possible to provide preliminary answers to the research questions outlined above.

Volume of Fine Usage

It appears that the use of fines in sentencing criminal offenders has remained relatively stable since the introduction of the day fine. Fine sentences were imposed in an average of 88 penal law cases per quarter during the six-month pretest period. Fines were imposed in 379 penal law cases during the first year of pilot operations—an average of 95 per quarter.

As can be seen in table 4, the total dollar amounts ordered by the court have risen somewhat since the introduction of the day-fine system. The total amount ordered averaged \$19,705 per quarter during the pretest period, or an annualized estimated amount of \$78,818. The total dollar amount ordered during the first year of the pilot period was \$93,078—an increase of 18 percent. However, because of the relatively low statutory maxima (combined with plea-negotiation practices that cause the bulk of fine sentences to be imposed for conviction charges at the violation level), about one-quarter of the fines were capped below the dollar amounts that resulted from the judges' day-fine computations (see footnote 3 to table 4). For this reason, average fine amounts have risen by only 8 percent (\$246 compared to \$226) since introduction of the day-fine system.

Some explanation of these findings is in order. In using the day-fine method to set the total amount of a fine, the number of day-fine units imposed in a particular case (as determined by the seriousness of the criminal activity involved) is

Table 4
Comparison of Fine Amounts in Pretest and in Day-Fine Periods¹

	No.	Total Dollars Imposed	Minimum Fine Imposed	Maximum Fine Imposed	Mean Average Fine Imposed	Median Fine Imposed
Pretest Sample (Two Quarters):	175	\$39,409 ²	\$25	\$1000	\$226	\$150
Test Year Fines: Actual Amounts Imposed:	379	93,078	20	1000	246	240
"Uncapped" Amounts: ³	379	140,825	20	3,164	372	235

¹The pretest sample is comprised of all 175 penal law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars during a six-month period (two quarters) from November 21, 1987 to May 20, 1988. The test year fine sample is comprised of all 379 fines imposed in penal law cases during the pilot year, from August 12, 1988 to August 11, 1989. All amounts in this and other tables are rounded off to the nearest dollar.

²This total figure gives an average of \$19,705 per quarter.

³In 93 of 379 fine cases (25 percent) the dollar amount of the day fines imposed was less than it would have been if there were no statutory maxima. In these cases, the judges were obligated to "cap" the day fine at the maximum allowed under the penal law. The difference between the "capped" and "uncapped" fine amounts in these cases ranged from \$2.50 to \$3,164.00; the average difference was \$513.41.

multiplied by the value of each unit (set by the judge to reflect a fair share of an individual offender's daily net income). Therefore, it is not unlikely that in more serious cases, and for more affluent offenders, a judge will find the dollar amount of the day fine exceeding the maximum fine amount allowed under the New York State Penal Law, especially because these limits have not been changed since 1965 despite substantial inflation.

For example, in an actual case involving damage to property in excess of \$1000, the number of day-fine units set by the judge in accordance with the benchmark scale prescribed for P.L. 145.00 (criminal mischief in the fourth degree, an A misdemeanor) was 60 units. The offender had a net daily income of \$64 (equivalent to an annual gross income of \$33,540), on which he supported a wife and child. Under the day-fine system, the fair-share unit value for this offender was \$23.23. The total amount of the day fine in this case, therefore, was \$1394. However, because the maximum fine allowed under the penal law for an A misdemeanor is \$1000, the judge was obliged to cap the day fine and sentence the offender to the statutory maximum.

During the first year of pilot operations, 93 capped day fines were imposed, comprising 25 percent of all penal law fines. In 10 of these cases the day fine was capped at the \$1000 limit for an A misdemeanor, as illustrated above. In nine cases, the conviction was for a B misdemeanor so the fine was capped at the statutory limit of \$500. In the remaining cases the offender was convicted of a violation, so the cap was \$250.

As can be seen in table 4, if the State's statutory fine maxima allowed the day fines to vary freely according to the benchmark scales and offender means, the mean fine amount would have been \$372, sixty-five percent higher than the \$226 mean for the pretest period. Furthermore, this increase in average fine amounts—when coupled with the modest increase in the use of fines—would have caused total court-ordered fine dollars to increase by 79 percent (from a pretest average of \$19,705 per quarter to \$35,281 per quarter during the pilot year).

The question remains as to why so many of the day fines had to be capped at the violation maximum, thereby depressing overall average fine amounts. The explanation lies in the plea-negotiation process. As in many other jurisdictions, plea negotiations produce some charge reduction in most cases disposed in the Staten Island Criminal Court. Felonies are often reduced to misdemeanors (and—more rarely—to violations); misdemeanors are often reduced to violations at disposition. During the day-fine period, 74 percent of the fined cases were reduced to violations at disposition.

There are a variety of reasons why a case may result in a violation charge at disposition. In some instances, the evidence may not clearly meet the standard of proof required for a criminal conviction, yet the offender may admit to a violation offense such as disorderly conduct. Even when there is clear evidence of criminal conduct, however, a judge may feel that the offender should be spared a record of

criminal conviction in the case if he or she has little or no prior record. This is a common practice in the Staten Island court.

In cases in which a conviction for a violation occurs to "give a break" to a deserving offender, a judge may wish nonetheless to impose a fine penalty in an amount that reflects the seriousness of the provable criminal conduct. In other cases, the judge would impose the more nominal sum that is warranted when all the evidence sustains only the violation charge (such as disorderly conduct). When the former circumstances arose during the early days of the day-fine experiment, judges tended to determine the number of day-fine units in accordance with the benchmark scale appropriate for the misdemeanor charge for which the offender could have been convicted, rather than the lower number prescribed for the violation-level offense for which the offender was sentenced after a plea. This practice was followed in 90 of the 267 day-fine cases, and accounted for 65 of the 93 capped fines.

One of the effects to be expected when a court system adopts procedures that allow for systematic imposition of fine amounts set in relation to the economic means of individual offenders is a general dispersion of fine amounts across the permissible range. In contrast, it is characteristic of the fixed-sum fining system that fine amounts will cluster at a limited number of round figures along the range (\$50, \$100, \$250, etc.), which comprise the "going rates" prevalent in local sentencing practice.

Table 5 illustrates, therefore, a second important effect of introduction of the day-fine method. During the pretest period, fines did tend to cluster at a limited number of specific dollar values within the statutory permissible range of \$1 to \$1000. Fourteen percent of those fixed-sum fines were set at \$50; 7 percent were at \$75; 22 percent at \$100 and so on. As expected, however, introduction of the day-fine method diminished this clustering effect. Despite the judges' common practice of rounding off the day-fine amounts (e.g., a day-fine of \$48 becomes \$50), only 8 percent were set at \$50; four percent at \$75; and 11 percent at \$100. Under the day-fine system there were fine amounts set at 52 specific dollar values within the permitted range (compared with 17 during the pretest period). Absent the statutory caps, this dispersion effect of the day-fine system would have been even more pronounced because the bulk of the 125 fines set at \$250 would have been spread across a wider and higher range, as determined by the day-fine method.

This dispersion, coupled with the increases in average fine amounts, suggests that judges are, for the most part, using the day-fine method as it was intended: to differentiate more widely among fined offenders on the basis of their means. In contrast, despite a formal shift to the day-fine method, judges could have attempted to retain the fining patterns imbedded in the old system by "backing into" predetermined fine amounts through the manipulation of figures they use in setting fine amounts (e.g., by simply dividing a tariff-derived dollar amount by a conveniently calculated day-fine "unit" number to derive a unit value figure).

Table 5
Comparison of Fine Amounts in Pretest and in Day-Fine Periods¹

Actual Dollar Amounts Imposed	Pretest Sample		Test Year ²	
	No.	%	No.	%
\$20			1	0.3%
25	4	2.3%	5	1.3
30			2	0.5
35			1	0.3
45			2	0.5
50	24	13.7	29	7.7
52			1	0.3
59	1	0.6		
60			2	0.5
65			1	0.3
70			1	0.3
73			1	0.3
75	13	7.4	16	4.2
80			5	1.3
85			3	0.8
87			1	0.3
90			1	0.3
100	38	21.7	42	11.1
110			4	1.1
115			1	0.3
120			5	1.3
125	1	0.6	4	1.1
130			1	0.3
138			1	0.3
140			5	1.3
150	10	5.7	18	4.7
160			1	0.3
170			4	1.1
175	1	0.6	1	0.3
180			6	1.6
190			1	0.3
200	14	8.0	16	4.2
215			1	0.3

Table 5—Continued

Comparison of Fine Amounts in Pretest and in Day-Fine Periods¹

Actual Dollar Amounts Imposed	Pretest Sample		Test Year ²	
	No.	%	No.	%
220			1	0.3%
225	3	1.7%	2	0.5
230			1	0.3
232			1	0.3
235			1	0.3
240			4	1.1
250	40	22.9	125	33.0
300			4	1.1
320			1	0.3
350	2	1.1	1	0.3
387			1	0.3
400			2	0.5
425			1	0.3
450	1	0.6	2	0.5
500	9	5.1	24	6.3
650			1	0.3
750	2	1.1	3	0.8
924			1	0.3
950	3	1.7	2	0.5
1000	8	4.6	18	4.7
UNK	1	0.6		
TOTAL	175	100.0	379	100.8

¹The pretest sample is comprised of all 175 penal law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The test year fine sample is comprised of all 379 fines imposed in penal law cases from August 12, 1988 to August 11, 1989.

²The expected dispersion of fine amounts after introduction of the day-fine system has produced an array of dollar amounts with much less clustering at the previously dominant dollar figures. A few "peaks" still appear along the continuum of day-fine amounts, however, (such as those at \$100 and \$250). As discussed in the text, the \$250 cluster is caused by the capping of fines in violation cases due to the current statutory maximum. Reasons for clusters such as the one at \$100 are less clear; some of these day fines were produced when judges rounded off dollar amounts which fell close to the \$100 mark.

Types of Offenses Sanctioned with Fines

It can be seen that the introduction of the day fine has not greatly affected the types of offenses that draw a fine. This is revealed in a comparison between the pretest period and the first quarter of the pilot in regard to the range of offense severity and the range of offense types drawing a fine sentence. Table 6 shows the distribution of penal law offenses that appear as arraignment charges in cases that received fine sentences before and after the introduction of the day-fine system. In table 7 these arraignment charges are sorted into the severity classes provided in New York State Penal Law. Felonies are categorized by New York State Penal Law as ranging from the most severe—Class A—through the least severe—Class E. Class A felonies (e.g., homicide in the first degree) are punishable by sentences up to life imprisonment. Class B through E felonies are punishable by prison sentences up to 25, 15, 7, and 4 years, respectively. Class A misdemeanors are punishable up to 1 year in prison; Class B up to 90 days. Violations are noncriminal offenses.

The bulk of offenders fined during both periods were arraigned on class A misdemeanor charges: 71 percent during the pretest period and somewhat fewer (62 percent) during the day-fine period. The proportions of offenders arraigned on felony charges and on class B misdemeanors showed modest gains.

In contrast, an examination of arraignment offenses by charge type (in contrast to severity) does show more shifts in the categories of offenses drawing a fine sentence since the introduction of the day-fine system. Table 8 compares arraignment charges for both periods in terms of the type of offense charge. The cases are sorted among the four offense-type categories created by project planners in developing the day-fine benchmark scales for use in the experiment: (1) property and theft offenses; (2) offenses involving harm or threat of harm to persons; (3) offenses involving drugs or contraband; and (4) misconduct, obstruction, and sex offenses.

The greatest changes have occurred in the category involving drugs and contraband. During the pretest period the proportion of drugs and contraband cases receiving a fine sentence was 37 percent; during the first year of the experiment the proportion decreased to 27 percent. For property and theft offenses as well as offenses involving harm to persons, the proportions rose somewhat.

The available data do not allow for an examination of case-processing changes that could explain these shifts; such analysis must await the full evaluation. However, the decrease in the proportion of drug and contraband offenses drawing a fine sentence seems unlikely to have been caused by the introduction of the day-fine system. Broad shifts in the handling of drug cases by the New York courts have occurred in recent months in response to renewed demands for "get-tough" policies to combat the spiraling problem of drug abuse. It may be that more drug

Table 6

Comparison of Arraignment Charges between Pretest and Day-Fine Periods¹

Arraignment Charge (Type and Degree)	Number Imposed in Pretest Period		Number Imposed in Day-Fine Period	
	No.	%	No.	%
Assault 3	8	4.6%	22	5.8%
Assault 2	10	5.7	22	5.8
Menacing			4	1.1
Reckless Endangerment 2	1	0.6	8	2.1
Reckless Endangerment 1			6	1.6
Sexual Abuse 2			3	0.8
Trespass			1	0.3
Criminal Trespass 3	1	0.6	6	1.6
Criminal Trespass 2			3	0.8
Burglary 3	1	0.6	4	1.1
Attempted Burglary 3			1	0.3
Burglary 2	1	0.6	5	1.3
Burglary 1			1	0.3
Poss. of Burglary Tools			2	0.5
Criminal Mischief 4	3	1.7	2	0.5
Criminal Mischief 3			2	0.5
Criminal Mischief 2			1	0.3
Arson 4			1	0.3
Arson 3			2	0.5
Attempted Grand Larceny			3	0.8
Petit Larceny	20	11.4	49	12.9
Grand Larceny 3	5	2.9	7	1.8
Grand Larceny 2			3	0.8
Robbery 3	1	0.6		
Attempted Robbery 2			1	0.3
Robbery 2	1	0.6	3	0.8
Misapplication of Property	1	0.6		
Unauth. Use of a Vehicle	3	1.7	3	0.8
Auto Stripping 2			1	0.3
Theft of Services			1	0.3
Poss. of Stolen Property 5	7	4.0	19	5.0
Poss. of Stolen Property 4	2	1.1	5	1.3

Table 6—Continued

Comparison of Arraignment Charges between Pretest and Day-Fine Periods¹

Arraignment Charge (Type and Degree)	Number Imposed in Pretest Period		Number Imposed in Day-Fine Period	
	No.	%	No.	%
Poss. of Stolen Property 3	2	1.1	9	2.4
Forgery 2	1	0.6%	3	0.8%
Poss. of Forged Insts. 3	1	0.6	5	1.3
Poss. of Forged Insts. 2	1	0.6	2	0.5
Unlaw. Use of Slugs 2			1	0.3
Offering a False Inst.	1	0.6		
Insurance Fraud 3	2	1.1	12	3.2
Issuing a Bad Check			1	0.3
Criminal Impersonation 2	3	1.7	6	1.6
Obstructing Govt. Admin. 2	2	1.1	5	1.3
Bribery 2			1	0.3
Receiving Reward 2	1	0.6		
Resisting Arrest	12	6.9	21	5.5
Making Pun. False Statement			1	0.3
Criminal Contempt 2	1	0.6	1	0.3
Poss. of Cont. Substance 7	26	14.9	45	11.9
Poss. of Cont. Substance 5	1	0.6	2	0.5
Poss. of Cont. Substance 4			3	0.8
Poss. of Cont. Substance 3			4	1.1
Sale of Cont. Substance 3	3	1.7	5	1.3
Poss. of a Hypo. Instr.			4	1.1
Poss. of Cont. Substance 6			1	0.3
Poss. of Marijuana	1	0.6	2	0.5
Poss. of Marijuana 5	2	1.1		
Poss. of Marijuana 4			1	0.3
Poss. of Marijuana 2	2	1.1		
Sale of Marijuana 4	11	6.3	8	2.1
Promoting Gambling 2	2	1.1	4	1.1
Poss. of a Gambling Device	4	2.3	1	0.3
Prostitution			1	0.3
Criminal Anarchy			1	0.3
Disorderly Conduct	3	1.7	2	0.5
Harassment			1	0.3
Aggravated Harassment 2	1	0.6		

Table 6—Continued

Comparison of Arraignment Charges between Pretest and Day-Fine Periods¹

Arraignment Charge (Type and Degree)	<u>Number Imposed in Pretest Period</u>		<u>Number Imposed in Day-Fine Period</u>	
	No.	%	No.	%
Loitering 1			1	0.3
Loitering for Prostitution	1	0.6%	1	0.3%
False Rept. Incident 3			1	0.3
Public Lewdness			4	1.1
Eavesdropping			1	0.3
Possession of a Weapon 4	8	4.6	17	4.5
Possession of a Weapon 3	4	2.3	5	1.3
Possession of a Weapon 2	1	0.6		
Prohibited Use of a Weapon	1	0.6		
Unlaw. Dealing w. Fireworks	1	0.6	5	1.3
UNKNOWN	11	6.3		
			*	
TOTAL	175	100.4	379	100.8

¹The pretest sample is comprised of all 175 penal law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The test year fine sample is comprised of all 379 fines imposed in penal law cases from August 12, 1988 to August 11, 1989.

Table 7
Charge Severity of Fined Cases during Pretest Period and Day-Fine Period¹

Level of Offense Charged at Arraignment	Pretest Period		Test-Year Period	
	No.	% ²	No.	%
Felonies:				
All	41	25%	11	31%
Class B	3	2	10	3
Class C	3	2	13	3
Class D	25	15	71	19
Class E	10	6	22	6
Misdemeanors:				
All	119	73	258	68
Class A	117	71	234	62
Class B	2	1	24	6
Violations	4	2	5	1
Unknown	11			
TOTAL	175	100	379	100

¹The pretest sample is comprised of all 175 penal law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The test-year fine sample is comprised of all 379 fines imposed in penal law cases from August 12, 1988 to August 11, 1989. Charge severity is measured by the severity levels provided in New York State Penal Law.

²Percentages subtallied in this column may not add up precisely due to rounding. Unknown cases were not included in the base for calculating percentages.

Table 8
Charge Type of Fined Cases during Pretest Period and Day-Fine Period¹

	<u>Pretest Period</u>		<u>Test-Year Period</u>	
	No.	% ²	No.	%
Property and Theft Offenses:	55	34%	159	42%
Offenses Involving Harm to Persons:	21	13	72	19
Offenses Involving Drugs and Contraband:	61	37	102	27
Misconduct, Obstruction, and Sex:	27	16	46	12
Unknown:	11			
TOTAL	175	100	379	100

¹The pretest sample is comprised of all 175 penal law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The test-year fine sample is comprised of all 379 day-fines imposed in penal law cases from August 12, 1988 to August 11, 1989. Charge type is sorted according to categories created during the planning phase of the pilot project.

² Unknown cases were not included in the base for calculating percentages.

cases are being indicted and waived to the superior court in the county, and that stiffer sentences are being meted out in those drug cases remaining in the lower court.

Assessing the Efficacy of Collection Procedures

To evaluate the efficacy of the collection and enforcement methods, project managers have tracked the 379 penal law fine cases that were sentenced during the first year, and the results are presented below. The picture presented by the current data is quite encouraging. Although payment outcome data is still incomplete (some cases are still open), the final evaluation can be expected to show a very favorable record, both in terms of the proportion of offenders who pay in full and the proportion of revenues actually collected.²⁰ A handful of the offenders sentenced during that year were still making installment payments as of June 1990, and a larger number of cases that have resulted in outstanding warrants will undoubtedly result in full payment—though others will receive jail sentences—when the offenders involved are returned to court.

Within 11 months of the close of the project's first year, 70 percent of the 379 fined offenders have paid in full. Another five offenders have received a modification of their fine amount (that is, they had paid a substantial amount of their fine before the balance was remitted by the court). Five others were still making installment payments, and fine payments by three offenders had been stayed, pending appeals of their convictions. Warrants were outstanding for 54 fined offenders (14 percent). Forty-eight offenders (13 percent) had been returned to the court for resentencing. Among this group, 16 offenders (one-third) had their fine sentence revoked and were resentenced to community service or some other noncustodial alternative. The remaining 32 offenders were jailed. Nineteen of these were resentenced to "time served" (which, in cases of this type, usually equated to the day or two spent in police custody before arraignment), while the remaining 13 received additional terms of jail, averaging 11 days' duration each.

Overall, the enforcement rate for fine sentences during the pilot year appears very strong. The bulk of fines imposed have been paid in full; 84 percent of fined offenders have been successfully "punished" (that is, they have paid or have been returned to court and resentenced appropriately). And, although the court's power to jail for default probably contributes greatly to produce this positive result, it has been accomplished with relatively little recourse to this most drastic enforcement measure. Of the "finished cases," only 32 offenders (10 percent) have been jailed for default.

Looking at the outcome from the point of view of revenues collected, the picture is even *more* positive. Because substantial amounts of money had been paid by some offenders who then defaulted (and have outstanding warrants, or have been resentenced), the proportion of revenues collected exceeded the proportion of

cases resulting in full payment. Within 11 months after the end of the pilot year, \$71,671 had been collected—77 percent of the \$93,078 imposed by judges during the pilot year.

Assessing the Role of the Day Fine in Sentencing Reform

Without a thorough evaluation of all cases adjudicated by the Staten Island Criminal Court before and after the day-fine system was introduced, it is not possible to give a precise accounting of the effects of this innovation. Using the limited data now available, any conclusions made regarding changes in the patterns of fine use must be seen as tentative. Nevertheless, these data provide positive evidence for those who have argued that the day fine holds promise for improving the use and administration of fines in American courts.

That the volume of fines imposed in penal law cases remained stable suggests that, despite the introduction of new procedures requiring calculation of fine amounts using heretofore unfamiliar methods, the day fine proves an attractive sentencing option with advantages over the fixed-sum fine. That 71 percent of all fines imposed during the first year of the pilot were set using the new procedures further attests to the usefulness of the system designed by the project's planning group.

The 18 percent increase in total dollar amounts ordered by the court, coupled with the rise in the average fine amounts since introduction of the day-fine system, demonstrates that the new system has a revenue-enhancing effect. Indeed, the 79 percent rise in total dollars ordered that would have occurred but for the current low statutory fine maxima gives strong evidence that revenues derived from fines would rise sharply, once the New York State Legislature provides fine maxima sufficiently high to allow day fines to float freely to the proper dollar amount as determined according to each individual offender's means.

The greater dispersion of fine amounts within the currently permitted ranges offers significant evidence that judges have used the new procedures properly to differentiate more fairly among offenders of differing economic circumstances. The stable rates of distribution of fine sentences across offenses of different severity demonstrate that judges have not been timid about using the day fine in the full range of criminal cases where they would have previously imposed a fixed-sum fine.

Although the final outcome of the collection effort is still unknown, the current high level of fines paid and revenues collected demonstrates that—at the least—introduction of the day-fine technique has not diminished the Staten Island court's capacity to impose fines with confidence that offenders so sanctioned will comply, and that cases of default will present no great difficulty for the court or strain available correctional resources.

Taken together, these preliminary findings reinforce the proposition that, if a more deliberate sentencing policy shift were to be undertaken to restructure sentencing practices, the day fine can play a major—perhaps even the leading—role as an intermediate sanction. As cost constraints place increasingly stringent limitations on our capacity to deliver justly deserved punishment to criminal offenders through incarceration, concerns about fairness and humane treatment of offenders have begun to stimulate consideration of more systematic sentencing reform efforts. While reserving imprisonment for the violent, predatory crimes that require the most severe sanction, a well-developed intermediate penalty system—a range of broadly applicable, noncustodial sentences that can be scaled to provide appropriate levels of punishment across offenses of varying gravity—can provide an array of punishments for less serious crimes.

Many experts on sentencing reform are calling for new approaches to noncustodial sanctions that provide for more principled and proportionate use in sentencing, as well as to reduce the courts' reliance on incarceration. In their recent book on sentencing policy reform, Norval Morris and Michael Tonry have advocated the increased use of fines as the cornerstone of systematic development of an appropriate array of intermediate sanctions:

Whether one thinks of punishments in deterrent terms, with the economists, or in retributive terms, with the philosophers, there can in principle be no reason why the fine cannot serve as a credible punishment for non-trivial, indeed serious crimes....Let us consider the possibility that the fine might be the punishment of choice for all but a few criminals—the punishment first considered, the punishment to which all the rest are “alternatives.”²¹

Endnotes

1. Day-fine systems are in place in eight European countries (Finland, Sweden, Denmark, Germany, Austria, France, Portugal, and Greece), and are also found in Cuba, Costa Rica, and Bolivia. Efforts to establish the practice are progressing in Spain and Switzerland. In great Britain, a “unit-fine” system (similar to the Continental day fine but based on the offender’s weekly net income rather than the daily amount) has been piloted successfully in four Magistrates’ Courts and is now being proposed for nationwide use.
2. Support for the planning effort was provided by the National Institute of Justice and the German Marshall Fund of the United States.
3. National Institute of Justice, *Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction*, reported by Sally T. Hillsman, Joyce L. Sichel and Barry Mahoney (Washington, D.C.: Government Printing Office, 1984); National Institute of Justice, *The Practices and Attitudes of Trial Court Judges Regarding Fines as a Criminal Sanction*, reported by George F. Cole, Barry Mahoney, Marlene Thornton and Roger A. Hanson (Washington, D.C.: Government Printing Office, 1987); National Institute of Justice, *The Enforcement of Fines as Criminal Sanctions: The English Experience and Its Relevance to American Practice*, (Washington, D.C.: Government Printing Office, 1986).

4. Sally Hillsman, "Fines and Day Fines," *Crime and Justice: A Review of Research*, vol. 12, edited by Michael Tonry and Norval Morris (Chicago: University of Chicago Press, 1990).
5. Hans-Jorg Albrecht and Elmer Johnson, "Fines and Justice Administration: The Experience of the Federal Republic of Germany," *International Journal of Comparative and Applied Criminal Justice*, (1980), 4:3-14.
6. Daniel Glaser and Margaret A. Gordon, *Use and Effectiveness of Fines, Jail, and Probation*, (Los Angeles: University of Southern California, Social Science Research Institute, 1988).
7. *Statistical Report: Complaints and Arrests*, (New York: New York City Police Department Office of Management and Planning, 1986); *New York State County Criminal Justice Profiles: 1984* (Albany: New York State Division of Criminal Justice Services, Bureau of Statistical Services, 1985).
8. Hans Thornstedt, "The Day-Fine System in Sweden," Information Bulletin of the National Swedish Council for Crime Prevention, Bulletin No. 3 (1986).
9. Silvia S. G. Casale, "Fines in Europe: A Study of the Use of Fines in Selected European Countries with Empirical Research on the Problems of Fine Enforcement," Working Paper No. 10, *Fines in Sentencing* (New York: Vera Institute of Justice, 1981).
10. In Sweden, such guidance is provided by circulars promulgated by the regional Public Prosecutor's Offices for use by prosecutors in setting fine units for routine cases which can be resolved by prosecutor's penal orders. The practice of the courts is generally to follow these benchmarks in cases which come for sentencing.

The Swedish circulars are organized according to the type of crime involved (offenses against life and health, offenses against liberty and peace, theft and larceny, narcotic drug act crimes, vehicle offenses, etc.) and within categories, crimes are rated according to seriousness and assigned a prescribed value (or range) in day fines. No allowance is made for the offender's prior record. For some crimes—petit larceny, for example—the same day-fine unit value may be given again and again; the number of day fines is determined solely by the value of the stolen property. For other types of crimes—drunk driving is one—repeat offenders are unlikely to receive a series of day fines, and will soon move up the sentencing ladder to a suspended custodial sentence.
11. The analytic process was conducted according to some general principles suggested by Andrew von Hirsch in his book on the jurisprudence of sentencing, *Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals* (New Brunswick: Rutgers University Press, 1985).
12. 26 U.S.C. 6103 (i).
13. New York C.P.L. section 390.30.
14. *U.S. v. Couch*, 409 U.S. 322, 328 29 (1973).
15. *Fisher v. U.S.*, 425 U.S. 391 (1976).
16. *U.S. v. Doe*, 465 U.S. 605 (1984).
17. Ida Zamist, *Fines in Sentencing: An Empirical Study of Fine Use, Collection, and Enforcement in New York City Courts* (New York: Vera Institute of Justice, 1986).
18. The Federal guidelines represent a fairly generous standard in the sense that the poverty-level indicators are set far above the levels of family income which are derived by application of the basic grant formula used to determine welfare payments in New York City.
19. Zamist, *Fines in Sentencing*.
20. When the Vera Institute's Research Department completes the full evaluation of the pilot test, the experimental research design used to evaluate collection records should shed much light on the comparative effects of "individualized" collection over the standard methods now utilized in the New York City courts.
21. Norval Morris and Michael Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (New York and Oxford: Oxford University Press, 1990) p. 112.

Part III

THE MILWAUKEE MUNICIPAL COURT DAY-FINE PROJECT

Charles Worzella

Introduction

In late 1989, the Milwaukee Municipal Court began a 12-week experiment to test the feasibility of substituting day fines for the conventionally structured fines that the court had relied upon previously to sanction persons charged with low-level noncriminal offenses. This project was structured explicitly as a test of the new sanction. Procedures were developed so that certain persons were given day fines while others were fined in the conventional way. This permitted a direct comparison of the day fine with the more traditional fine. This essay describes the experiment as well as the findings of the evaluation.

The Milwaukee Municipal Court

What distinguished the Milwaukee experiment was that it sought to implement a day-fine system in a municipal court that deals only with lesser offenses, all of which are charged as noncriminal violations. The 3 judges in this court process over 100,000 such cases annually, all of which involve violations of city ordinances that regulate housing, traffic, parking, noise levels, sale of liquor, public order, and various other community standards of behavior. In addition, this court also hears cases against persons who could have been charged with criminal conduct under the State's penal laws. Persons apprehended for such offenses as carrying a concealed weapon, disorderly conduct, theft of retail store, vandalism, obstructing the issuance of a citation, loitering or prowling, and even assault and battery may be issued a citation for violating a municipal ordinance rather than arrested and charged under State law if the police determine this offense to be the suspect's first. The day-fines experiment concentrated on these persons who could have been charged with lower-level criminal offenses.

The Milwaukee Municipal Courts are of limited jurisdiction and are not courts of record. Violators do not have the right to a publicly funded lawyer. Prior to the day-fine project, a "tariff system" of assigning fine penalties was used in all cases, in which fines were set according to the type of violation. Input by the violator in setting the fine was rare. Few sentencing options were available to municipal judges. Judges were limited to imposing monetary penalties, although they could have ordered violators, if they volunteered, to provide unpaid community service in lieu of monetary fines or to undergo treatment.

The Emerging Interest in Day Fines

Milwaukee Municipal Court judges had long been concerned about nonpayment of fines. The rate of default on fine penalty judgments has been high. The

nonappearance rate for initial court appearance was about 60 percent in non-traffic cases, according to the court's administrator.¹ Failure to pay fines had a negative impact on the municipal court, on law enforcement, and on court services agencies. Each time an offender failed to pay a fine, time and money was spent to issue a warrant, to make an arrest, to detain the arrestee, and to re-calendar the case. On the average, 140 persons were committed each month to the Milwaukee County House of Correction for nonpayment of fines.

In addition, the court had been concerned about the equity of imposing high fines on low-income violators. At a public meeting on the municipal court, which was held by two of the municipal judges for city residents, citizens expressed concern about the impact of fine levels on low-income persons. This was seen to be a pressing problem because the majority of those appearing before the court are poor. About two-thirds of all defendants have incomes below the Federal poverty guidelines. Prior to the day-fines project, judges were limited in their ability to consider violators' financial means because presentence reports were not ordered for these cases and because the sheer volume of cases heard made it difficult for specific information and verification to be obtained directly from the bench.

Because day fines appeared to offer a method of better matching fines to violators' ability to pay, the judges of the municipal court decided to test the hypothesis that fine payment would be increased if fine amounts were scaled to the violators' ability to pay.

In July of 1989, a planning group was formed to design the project. Included were municipal court judges, the Municipal Chief Court Administrator, a Legal Aid Society attorney, and administrators of Wisconsin Correctional Service, Inc. (hereafter, WCS), a private, not-for-profit agency that had developed a number of programs for the city's criminal justice system. This group met over a three-month period to develop methods of valuing income, to establish benchmarks for day-fine units and procedures for handling information, and to develop and refine other operational procedures. In this work, the group drew heavily upon the pioneering work of the Vera Institute of Justice.

Designing and Implementing the Day Fine in the Milwaukee Municipal Court

The pilot project was designed to test the effectiveness of a day-fine system of assessing fine amounts as opposed to the traditional tariff method that had been used previously in Milwaukee Municipal Court. The essential components of the project included:

1. decisions about who was and was not eligible for day fines,
2. administrative procedures for establishing the amount of punishment to be imposed (in benchmark units), and
3. administrative procedures for determining the violators' ability to pay.

Defining Eligibility

The planning committee determined that the day fine should be used in cases where individuals were charged with non-traffic violations, and which could, in most instances, have been charged as a criminal offense under the State's penal code. Having an open judgment (i.e., an outstanding fine for a traffic or non-traffic violation) was not deemed to be a barrier. Outstanding fines were to be stayed for up to 90 days, unless circumstances warranted a longer period. This was done to isolate from the pending fines the effect that imposing a day fine might have on both the system and the violator. Violators with concurrent non-traffic and traffic cases were also to be included in the target population, with day fines imposed in both types of cases.

Several types of ordinance violators were excluded from the project for various reasons:

1. Non-traffic violators held in custody were not included because physical access to them for a means investigation interview was too difficult. In addition, these violators typically had other State cases or "holds" pending which might have resulted in incarceration.
2. Violators who refused to pay fines for political reasons were excluded because they might distort payment outcome data. That is, failure to pay in these cases might not be due to an inability to pay.

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3. Violators who refused to provide information about their income were not considered eligible.
 4. Juvenile violators were not included because payments might be made by others (their parents, for example).
 5. Corporate violators were excluded because of the difficulty of determining income and day-fine values.
 6. Violators charged only with traffic offenses (that is, operating an auto after revocation of license, driving while intoxicated, speeding, etc.) were not included because State law mandated minimum sentences for the majority of traffic offenses handled in Milwaukee Municipal Court.
 7. Building code violations were also excluded because of the complexity involved in calculating property owners' income and their ability to pay a fine.
 8. Also excluded were violators who had already negotiated the disposition of their cases with the City Attorney's Office prior to initial appearance. This was because judges' sentencing options were more constrained in such cases.

Establishing Benchmarks, or Units of Punishment

As mentioned above, prior to the experiment, judges in Milwaukee Municipal Courts determined fine amounts using a "tariff schedule" that established a standard fine amount for each type of violation. Generally, the offender's ability to pay was not considered. The innovation of the day-fine project involved separating out the assessment of how much penalty to order and the method of translating the penalty into dollars.

In the day-fine experiment, judges were required to make two types of determinations after conviction but before sentencing: How much of a penalty should be imposed (measured in benchmark units)? How able is each defendant to pay fines of varying levels?

Benchmarks in a day-fine system are similar to sentencing guidelines. Like guidelines, they represent a consensus view of what level of punishment is deemed appropriate for each given charge. Establishing these benchmarks is arrived at by a combination of reviewing historical sentencing patterns and consulting informed opinion of criminal justice practitioners. In setting units of punishment to be used by the municipal courts, project planners faced a long-standing Milwaukee tradition that constrained their choices.

For each type of violation, there was a *deposit amount* established by ordinance that could be paid by a violator if he or she chose not to contest the charge in court. These deposit amounts were defined to include the fine, set by consensus of the municipal judges, court costs, State and county surcharges, and fees. These deposit amounts therefore represented the typical, or "normal," fine that would be assessed if no mitigating or aggravating circumstances were present.

The existence of these established deposit amounts created a reasonable expectation that the deposit amount was the *maximum* that could be assessed. Because deposit amounts had been seen as an unofficial "cap," fines in excess of that amount were imposed only when aggravating circumstances existed. Project planners chose not to abandon this convention, and sought to accommodate the new day-fine system to it.

Judges in the planning group also decided not to set any fine lower than \$30, even though the day-fine sentencing calculus might prescribe a lower amount for violators with no income.

To establish benchmark units for specific offenses, the planning committee first decided that each benchmark was to be equal to \$20 worth of fine. Dollar amounts were to be rounded up or down to the nearest \$20. For each violation, benchmark ranges were then established, which conformed to the minimum and maximum fine levels that the city ordinance fixed. A median benchmark was then specified for each violation, which represented what had been the deposit amount (see appendix A). A full list of ordinance violations and benchmark ranges was available for each municipal judge on the bench.

Median benchmarks for the most frequently charged non-traffic offenses in Milwaukee Municipal Court are shown in table 9, which also indicates the tariff-based fines and deposit amounts established by the conventional system.

Given these benchmark ranges and median amounts, judges were asked to determine for each specific offender the amount of punishment to be imposed, measured in benchmark units. The exact number of benchmarks to impose was to be determined by the circumstances of the offense, any mitigating or aggravating circumstances (which were enumerated), and consideration of the offender's prior record.

Table 9

**Comparing Fines under Conventional Tariff System with Benchmarks
in the Day-Fines Project**

Offense	Conventional Practice		Day-Fine Project	
	Fine	Maximum Deposit	Median Benchmarks	Maximum Benchmarks
Disorderly Conduct	\$200	\$109	5	10
Retail Theft	500	319	16	25
Vandalism	500	319	16	25
Loitering/Prowling	500	139	7	25
Carrying Concealed Weapon	500	265	13	25
Assault & Battery	500	319	16	25
Abandoned Auto	200	79	4	10
Obstructing Issuance Of Citation	250	109	5	13
Theft	500	319	16	25

Assessing the Offender's Ability to Pay

European and American courts have used different methods to gauge the offender's ability to pay for determining the day fine. The method used by the Milwaukee Municipal Court Day-Fine Project was to adopt, almost entirely, a method of income valuation designed for fast-moving court systems in which cases are of the less serious variety. Such a method was developed for the Richmond County (New York) project and drew upon the experience of people in that court, day-fine experts from Europe, and officials of the Vera Institute of Justice in New York City.

Upon a finding of guilt but before imposition of sentence, information pertaining to the defendant's means of support was gathered in offices adjacent to municipal court by caseworkers who were employed by WCS. The interview format (shown in appendix B) consisted of questions about

- monthly income (for next three months)
- source of income
- place of employment
- contact for income verification

number of dependents
living situation/current address
contact for dependent verification
eligibility for benefits

The interview process took approximately 20 minutes to complete. In addition, the WCS caseworkers informed each defendant that the information supplied to the caseworker was not confidential, would be made part of the public court case file, and could result in legal liabilities. The defendant was also told that the information collected during the means investigation would be used by the judge to set a fine amount tied to the person's ability to pay.

WCS caseworkers then requested permission to verify dependent and income information. The defendant could refuse to allow verification for good cause (for example, that such a verification might be a threat to his or her employment). Only four violators (1.2 percent of all those who were considered during the project) refused to allow verification of employment. Information provided in over 90 percent of the interviews were determined by verifications to be accurate.

The method of assessing offender's ability to pay followed a three-step process to arrive at a *day-fine unit*. The value of a day-fine unit was determined by the following calculation.

1. Net daily income (determined in the interview and verified) was first discounted for offenders according to how many dependents they had. The discounts were as follows:

Self	15%
Spouse	15%
First Child	15%
Second Child	10%
Third Child	10%
Each Dependent Thereafter	5%

Credit was given for all dependent children who were supported by the defendant whether or not they lived with the defendant. Dependents also included adults supported by the defendant, (e.g., parents, grandparents, grandchildren, nieces, nephews).

2. Net daily income was further discounted for living expenses. Individuals with incomes over the Federal poverty guidelines had their income discounted by one-third. Individuals with incomes under the guidelines had their income discounted by one-half. The guideline in force at the time of the experiment is shown in table 10.

Table 10
Federal Poverty Guidelines (1989)

Size of Family	Poverty Guidelines
1	\$ 5,980
2	8,020
3	10,060
4	12,100
5	14,140
6	16,180
7	18,220
8	20,260

For family units with more than 8 members, add \$2,040 for each additional member.

3. Persons who had no source of income were imputed a day-fine value equal to that of a general assistance recipient, and the case was adjourned for 30 days to allow the person to apply for general assistance. The court instructed the defendant to come back to court at the end of the 30-day period if he or she had not obtained general assistance or a job. The court retained the option to consider volunteer work for those violators without income.

Using information obtained from these interviews, WCS caseworkers then determined the person's net daily income and calculated a day fine based on income valuation rules that were established for the project by the planning group (see appendix C). Once the day-fine amount was calculated, the WCS interviewer accompanied each violator back to court. The means investigation interview and the calculated day fine were presented to the judge at time of sentencing. Violators were informed of the day-fine amount by a municipal judge.

Payment plans were set up for violators who were not able to pay their fines immediately. These plans were generally limited to two months. Judges had the discretion to extend the period when violators did not pay their fines within the allotted time period.

Evaluating Milwaukee's Day-Fine Experiment

The Milwaukee Municipal Court Day-Fine Pilot Project was undertaken to assess the consequences of using day fines in lieu of conventionally set fines. Six research questions were addressed by the study.

1. How different will fine amounts be if they are assessed according to the offender's ability to pay, rather than determined by the tariff methods used previously by the municipal courts?
2. Will the imposition of day fines rather than conventional ones result in lower rates of nonpayment?
3. Does reliance on day fines improve payment by particular types of offenders, especially poorer ones?
4. Will the amount of revenue raised by the use of day fines be greater or smaller, in aggregate, compared to conventional fines?
5. Can the procedures for assessing day fines be used efficiently, without slowing sentencing procedures or the timely disposition of cases in the municipal courts?
6. Will defendants assessed fines under a day-fine scheme be less likely to recidivate compared to defendants given a more conventional fine?

To answer these questions, two comparison groups were created: one consisting of persons given a day fine, the others given a conventional fine. To create the two groups, the planning committee chose to have judges use day fines for two weeks and traditional fines for the next two, in alternating sequence. This permitted the creation of an "experimental" group—those given day fines—and a "control" group. Because there was no scheduling of one type of case for one week rather than the next, there was no systematic selection of cases that would be receiving day fines rather than traditional fines. This variant of a random-assignment research design permits a strong test of the effects of day fines because the fining practice was the only thing that was systematically changed from one week to the next. If a difference in payment outcomes is observed in one group, there are strong logical grounds for attributing that difference to the fining process and not to other differences among offenders.

Municipal court judges believed this method would prevent biasing research results and would strengthen the ability to generalize the findings beyond the sample population.

The experiment was run during a 12-week period, October 16th, 1989 to January 5th, 1990. The sample population consisted of 330 municipal violators, all of whom were not in custody and were charged with non-traffic municipal ordinance violations. The experimental group numbered 192 violators assigned day fines; 138 were in the control group. Follow-up of payment outcomes was conducted for four months, from January 15th, 1990 to May 15th, 1990.

Defendants in the experimental group were processed according to the procedures described above. Defendants in the control group were given fines in the conventional manner, but for research purposes a means interview with the defendant was conducted by WCS caseworkers after a finding of guilt and before sentencing. The findings of these interviews were not shared with judges so that their sentencing decisions would not be influenced by knowledge of the defendant's ability to pay.

Fine payment outcomes were then compared for the control and experimental groups to evaluate the effectiveness of a day-fine system as compared to the conventional method used in the Milwaukee Municipal Court.

The Sample Population and Characteristics of Experimental and Control Groups

Offenders sentenced during the 12-week project in both the control and experimental groups combined were predominantly male (74 percent); members of a racial or ethnic minority group (70 percent); less than 30 years old (29 years old, on average); had average monthly incomes of \$477; had no dependents (65 percent); and had no other pending cases in municipal court (72 percent). Sixty-eight percent had incomes below the Federal poverty guidelines; 34 percent derived their income from governmental benefits; and 18 percent had no source of income at all.

The two-week-on and two-week-off method of randomly assigning violators to experimental and control groups produced two groups that were nearly identical in their aggregate characteristics. Statistical (chi-square) tests indicated that differences between the two groups were not significant. Moreover, the proportion sentenced by one or the other of the two judges in the court was not significantly different in the experimental and control groups. Table 11 compares the two groups by several characteristics.

Table 11

**Comparing Experimental Groups Given Day Fines
and Control Groups Given Conventional Fines**

	<u>Experimental</u>		<u>Control</u>	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
<u>Race</u>				
White	54	28.3%	44	32.6%
Black	123	64.4	87	64.4
Other	14	7.3	4	3.0
<u>Gender</u>				
Male	137	71.7	105	76.1
Female	53	27.7	33	23.9
<u>Presiding Judge</u>				
Gramling	104	56.5	87	65.4
Miller	80	43.5	46	34.6
<u>Dependents</u>				
Self	123	64.1	92	66.7
More Than 1	69	35.9	46	33.3
<u>Poverty Guidelines</u>				
Below Federal Guideline	133	69.3	91	65.9
Above Federal Guideline	59	30.7	47	34.1
<u>Monthly Income</u>				
Average Gross Amount	\$461.09		\$420.51	
Median Gross Amount	\$440.00		\$400.00	

The Findings

Analysis was conducted to answer each of the six principal research questions.

How different will fine amounts be if they are assessed according to the defendant's income rather than according to the tariff methods previously used by municipal courts?

The use of day fines resulted in substantially lower fines being imposed, on average. For those given day fines, the average fine imposed per case was \$72, compared to an average of \$112 per case when the fine was determined by the conventional method.

As discussed above, the project's designers set boundaries on the day fines to be imposed, so that in some cases, the fine amount was not matched precisely to the violator's ability to pay. That is, all violators were given at least a \$30 fine, regardless of their ability to pay even that small amount. Upper caps were also established by the statutory limits on fines, which limited the ability to fine high-income earners proportionately. If the amount of fines had been set strictly according to the day-fine formula of multiplying benchmarks by day-fine unit rate, 36 percent of those given day fines would have had a fine less than \$30 imposed. A smaller proportion—22 percent—would have a higher amount imposed. Overall, the average fine would have been lower—14 percent less than what was actually imposed.

Are day fines more likely to be paid?

The use of day fines appears not to have reduced significantly the rate of non-payment. Nonpayment rates were high in both groups: within the 4-month follow-up period, 59 percent of those in the day-fine group failed to pay, compared to 61 percent of those in the group given conventional fines (see table 12). However, of those who paid, persons given day fines were more likely to pay in full rather than submitting partial payment. Thirty-seven percent of those given day fines paid in full, compared with only 25 percent of those given conventional fines. It is reasonable to conclude that the higher rate of full payment by day-fined offenders was due to the lower fine amounts imposed on these persons.

Table 12

**Relationship between Type of Fine Imposed
and Payment**

Type of Fine Imposed	Payment Outcome			
	None	Partial	Full	Total
Day Fine	113 (59%)	8 (4%)	71 (37%)	192 (100%)
Conventional Fine	84 (61%)	20 (14%)	34 (25%)	138 (100%)

*Does the use of day fines
improve payment rates by poor offenders?*

Low-income violators assigned monetary penalties through a day-fine system were better able to pay their fines than comparable violators assigned fines conventionally.

Table 13 shows the monthly income of offenders in the day-fined and conventionally fined samples. The poorest offenders were considered those whose monthly income was less than the poverty guideline level.

Table 13

**Monthly Incomes of Offenders Given Day Fines
and Conventional Fines**

Monthly Income	Day Fines		Conventional Fines	
\$0-197	63	(33%)	43	(33%)
\$198-505	54	(28)	44	(34)
\$506+	<u>75</u>	(39)	<u>42</u>	(33)
Total	192	(100%)	129	(100%)
Missing data on income levels:	0		9	

Table 14 shows the proportion of persons at each income level in the experimental day-fined group and the conventionally fined group who paid their fines in any amount. The poorest offenders were marginally more able to pay their fines, either in full or part, than poor people assessed conventional fines (35 percent of the 63 poorest persons in the day-fined group versus 30.3 percent of the 43 poorest given conventional fines). At higher levels of income, there was no difference in the likelihood of paying.

Table 14
Numbers and Percentages of Offenders Paying Their
Fines in Part or in Full, By Method of
Assigning Fines and Income Level

Monthly Income	Day Fines	Conventional Fines
\$0-197	35.0%	30.3%
\$198-505	37.1	36.3
\$506+	49.3	50.0

A more significant difference was found in the rates of full payment. Table 15 shows the percentage of offenders at each income level, in both the day-fined and the conventionally fined group, who paid their fines in full.

Table 15
Numbers and Percentages of Offenders
Paying Their Fines in Full, by Method
of Assigning Fines and Income Level

Monthly Income	Day Fines	Conventional Fines
\$0-197	33.3%	14.0%
\$198-505	31.5	29.5
\$506+	44.0	31.0

Those with the lowest amounts of monthly income were significantly more likely to pay their fines in full if they were assessed a day fine rather than a conventional, tariff-styled one. Of the 63 persons in the day-fined group who had incomes below the Federal poverty guideline level, one-third of them paid their fines in full, compared to only 14 percent of those with similar incomes assessed a conventional fine. There was only a marginal difference (and probably not statistically significant) at the middle range. At the higher income levels, persons given day fines were more likely to pay in full than persons given conventional fines.

Will day fines lead to higher or lower revenues for the court?

As indicated above, those given day fines were ordered to pay amounts that were lower, on average, than amounts required of conventionally fined persons. However, day-fined offenders were more likely to pay their fines in full. What was the aggregate effect of these differences on overall fine revenue to the court?

Those who paid their day fines in full or in part paid the court a total of \$6,584, compared to \$6,893 from those given conventional fines. However, there were more offenders in the day-fined group than the other: 192 versus 138, respectively. If one adjusts for these differences in sample size and assumes that there were as many given conventional fines as those given day fines, the total amount of fines paid by those given conventional fines would have been larger: about \$9,590. (This assumes that the larger group of conventionally fined offenders would have had the same sized fine, on average, as the 138 that we sampled and that their rates of payment would have been no different.) From this, we can estimate that the use of day fines resulted in revenues that were about 31 percent lower than they would have been if conventional fines were imposed.

This is only an estimate, because we do not know if the payment of the conventionally fined group was affected by participation in the experiment. All were given a means investigation interview, which is not part of the court's normal operations. Unfortunately, no reliable historical information exists about the payment rates of violators with non-traffic cases who are not in custody. Lacking this baseline information, it is difficult to know precisely how these offenders would have performed in the absence of the experiment.

It is also important to recognize that the Milwaukee experiment was not a pure test of the day fine. The floor and ceiling restrictions placed on the amount of day fines may have reduced both the number of violators paying their fines and the amount of total revenue collected. By allowing fine amounts to conform fully to the violator's income, a greater number of low-income violators may have been able to pay their fines, and higher income violators would have been required to pay larger fine amounts.

Can the procedures for assessing day fines be used efficiently, without slowing the disposition of cases in the municipal courts?

The introduction of a day-fine system in municipal court did not result in any serious delays in processing cases. Other cases could be processed while the courts awaited the results of means investigations. The short delay required of the means interview did not apparently affect the overall operation of the courtroom.

Does the use of day fines affect the rate of recidivism?

Assessing of fine amounts by either a day-fined or tariff system did not result in significantly different rates of recidivism among study participants. For purposes of research, the records of offenders in the experiment were tracked by researchers for nine months after their cases were disposed to see if further violations of municipal ordinances occurred. The rate of such subsequent violations was virtually identical for individuals assigned to the experimental day-fined group (33.9 percent) and to the conventionally fined group (33.3 percent).

The difference between day-fined and control groups in the rate of cases resulting in arrest warrants was also examined. The percent of violators who failed to pay fines and had warrants issued for their arrest was similar for day-fined (41.1 percent) and control groups (45.7 percent).

Conclusion

The results of this experiment indicate that implementation of a day-fine system in a municipal court setting has the potential to increase collection rates and reduce the attendant costs associated with nonpayment of fines. Such costs include the preparation of arrest warrants, clerical time to record and prepare arrest warrants, law enforcement apprehension, booking and conveying prisoners, additional court appearances, court personnel time for violators repeatedly brought back to court on warrant returns, and commitment to correctional facilities.

In the Milwaukee experiment, this increased collection rate was achieved without making an investment in a collection enforcement effort. The use of a day-fine system, by itself, resulted in improved fine collection. There was a minimal slowing of case processing which did not significantly hinder the effectiveness or efficiency of the court.

Two costs associated with day fines were identified. One was the additional expense of administering the assessment procedures. The second was the potential decline in revenues to the court. A definitive conclusion about the impact on revenues cannot be made without an analysis of fine payment outcomes absent all experimental interventions (e.g., means investigations interviews).

The Milwaukee project was restricted to a narrowly defined group of violators. Analysis of the experience of the project suggests several directions for further experimentation:

1. Extend the use of day fines to other categories of violators, including those in custody. The Milwaukee experiment focused on a very narrow band of violators, and other types may respond to a day-fine system differently.
2. Eliminate the use of fine floors and ceilings in order to equalize more fully the impact of monetary penalties among violators with different economic means. More violators might have paid their fines if the day fine had been set in accordance with their actual ability to pay. Likewise, more revenues may have been collected if those with the ability to pay more than the deposit amount had been assessed fines over the ceiling fine amounts.
3. Supplement the day-fine system with various fine collection methods. Enforcement efforts, employed in conjunction with day fines, may have a significant effect on fine collection. A study that

assigns sentenced violators randomly to either a day-fine only group or to a day-fine group subjected to enhanced enforcement techniques would test the impact of enforcement efforts on fine revenue.

Endnotes

1. Communication with Court Administrator, August 1989.

APPENDIX A

MILWAUKEE MUNICIPAL COURT DAY-FINE BENCHMARK SCALES

MILWAUKEE MUNICIPAL COURT DAY-FINE BENCHMARK SCALES

Section Number	Ordinance	Median Benchmarks	Benchmark Range
105-60	Abandoned Ice Box	4	0-5
105-65	Abandoned Vehicles	4	1-10
110-36	Abandonment of Shopping Carts	4	1-25
2-166(8)(a)	Alarm Companies—Faulty Alarms	7	0-25
2-166(6)(b)	Alarm Companies—Poor Response	7	0-25
106-2(2)	Alcoholic Drink Opened in Moving Vehicle	4	0-05
107-13	Amusement Machines and Devices, Coin Operated-Permit Minor to Operate	7	1-25
105-2	Assault and Battery	16	1-25
105-21(1)	Baseball, Basketball, Softball Prohibited between 10 PM-8 AM on City Play Areas, Playgrounds and Playfields	4	1-03
106-1.1	Begging	2	0-05
42-19	Billboards on Public Property	4	1-10
102-2	Bicycle License	2	1-02
102-2	Bicycle License—Parent or Guardian Permitting	2	1
102-8	Bicycle Horn or Warning Device	2	1
110-8	Breaking Street Lamps or Windows	2	1
250-5	Careless Use of Smoking Materials	13	8-250
105-34	Carrying Concealed Weapon	13	10-25
106-30	Cigarettes or Papers Transferred to Minor	2	1-2
110-1	Coin Machines—Tampering/Damage	5	3-25
106-23.2	Contributing to Delinquency	7	1-25
106-23	Curfew—Loitering of Minor under Age 17	3	0-01
106-23(1)	Curfew—Parents' Responsibility	3	1-10
106-23(2)	Curfew—Operator's Responsibility	7	1-10
106-23(3)	Curfew—Hotel's, Etc. Responsibility	7	1-10
110-3	Damage to Drinking Fountains	3	1-03
110-4	Damage to Public Property	3	1-03
105-35	Discharge of Firearms in City	16	1-25
106-1	Disorderly Conduct	5	0-10
101-43	Defacement, Unauthorized Removal and Possession of Traffic Control Signals	13	5-25
106-9.6	Display of Sexually Explicit Material or Devices to Minor	7	0-25
108-13(1)	Endurance Contests, Marathons, Etc.— Time of Participation	7	0-10
108-13(2)	Endurance Contests, Marathons, Etc.— Permit Required	7	0-10
5-3	Excavation/Installations on Public Places without Permit	6	1-13

**MILWAUKEE MUNICIPAL COURT DAY-FINE
BENCHMARK SCALES (Cont'd)**

Section Number	Ordinance	Median Benchmarks	Benchmark Range
81-99(5)	Failure to Comply with Precious Metal and Gem Dealers Regulations (First Offense)	21	3-50
81-99(5)	Failure to Comply with Precious Metal and Gem Dealers Regulations (Second Offense)	45	25-100
81-104(5)	Failure to Comply with Secondhand Dealers Regulations (First Offense)	21	3-50
81-104(5)	Failure to Comply with Secondhand Dealers Regulations (Second Offense)	45	25-100
5-3	Failure to Obtain Excavation Permit	5	1-13
100-67(4)	Failure to Pay Taxi Fare	5	0-25
105.47	Fireworks	7	5-25
75-17	False Communication for Emergency Medical Service	7	0-25
106-16	Fortune Telling Prohibited	4	1-25
110-32	Fraud on Hotel/Restaurant Keeper	5	0-25
84-20(15)	Fraud on Parking Lot Operators	5	3-25
107-2	Gambling/Inmate of Gambling House	7	0-10
105-70	Glue Sniffing/Transfer to Minor	7	5-25
106-8	Harassing/Obscene Phone Calls	7	3-10
2-138	Hindering an Officer	5	1-13
109-1(3)	Housing Discrimination	7	1-10
106-5	Indecent Exposure	7	3-13
106-3	Inmate of House of Prostitution	13	5-25
92-3	Junk Collectors and Dealers	16	13-50
110.12	Landlord Prohibit Forced Entry	10	1-25
106-21(2)	Library Card—Unlawful Use	5	1-10
106-21(3)	Library Materials—Fail to Return	5	1-10
106-21(4)	Library Materials—Theft	7	3-25
8-62(1)	Loiter on Drawbridge	3	1-5
106-31(1)(a)	Loitering or Prowling	7	0-25
106-31(1)(b)	Loitering—Window Peeping	7	0-25
106-31(1)(c)	Loitering—Public Rest Rooms, Lewd Acts	7	0-25
106-31(1)(d)	Loitering on School Property	7	0-25
106-31(1)(e)	Loitering in Public Buildings (Lodges)	7	0-25
106-31(1)(f)	Loitering in Restaurants, Taverns, Etc.	7	0-25
106-31(1)(g)	Loitering—Prostitution Related	13	0-25
106-11	Mashing	10	1-13
106-13	Massage Establishments	13	8-25
80-63	Noise Pollution	10	3-25
80-65(4)	Noise Nuisances Where Sound Level Measurements Not Practical	4	1-10

**MILWAUKEE MUNICIPAL COURT DAY-FINE
BENCHMARK SCALES (Cont'd)**

Section Number	Ordinance	Median Benchmarks	Benchmark Range
95-14	No Home Improvement License	4	1-13
106-7	Obscenity	10	5-25
5-32	Obstruction on Public Ways	6	1-13
105-55	Outdoor Magazine Solicitation	4	0-5
101-32.4	Parking Meters—Damaging/Tampering	5	3-25
92-1	Pawnbrokers License	16	13-50
106-3	Patron of House of Prostitution	4	0-05
110-1	Possession of Key to Open Meter	5	3-25
80-3	Private Visual Presentation Violation on Commercial Establishment	16	3-50
106-1.8(1)	Public Drinking	3	1-05
2-25(5)	Resisting or Obstructing Issuance of a Citation	5	1-13
110-35	Retail Theft—Value Not Over \$100	16	0-25
105-1	Riot, Disorderly Assemblage	4	0-03
84-41	Roller Skate Rentals—License Required and Restrictions	4	3-13
105-56	Sale on Public Premises	4	1-10
244-18	Signs Posted on Public Property	7	1-25
105-50	Smoking, Drinking and Radio or Tape Players on Buses	2	1-03
105-49	Smoking in Theater	2	1
105-69	Sniffing Harmful Substances/Transfer to Minor (Paint)	7	5-25
6-12	Snow Plowing Equipment License	4	1-05
6-8	Snow Removal	2	1-05
80-15	Spitting in Public Places	2	1
97-3	Tampering with Water Works Facilities and Theft of Water	16	0-50
100-52 thru 100-70	Taxi Cab Permit and Driver Regulations	4	1-5
110.12	Tenant Deny Access to Landlord	10	1-25
110-16	Theft	16	1-25
99.13(10)	Theft of Services/Tampering Cable System	31	0-25
84-48	Tires—Unserviceable Tire Generators and Transporters	31	8-250
110-10	Trespassing upon Buildings or Premises	4	0-25
101-20	Unnecessary Vehicle Noises Prohibited	3	2
110-15	Vandalism	16	0-25
105-66	Vehicle Repair on Street	4	1-10
110.33	Worthless Checking	16	3-50

**MILWAUKEE MUNICIPAL COURT DAY-FINE
BENCHMARK SCALES (Cont'd)**

Section Number	Ordinance	Median Benchmarks	Benchmark Range
ANIMAL ORDINANCES			
78-2	Keeping of Animals	4	1-10
78-3(1)	Kennels	7	1-10
78-3(2)	Animal Fancier Permits	7	1-10
78-4	Pet Shop License	7	1-10
78-5	Grooming Establishments	7	1-10
78-7	Sanitation of Commercial Animal Establishment	4	1-10
78-8	Current Dog and Cat License Required	3	1-10
78-9(1)	Permitting Animals to Run at Large	3	1-10
78-9(2)	Setting an Animal at Large	3	1-10
78-9(3)	Animal Litter	3	1-10
78-11	Harboring Vicious Animal	7	3-25
78-13	Animal Disturbing the Peace	5	3-25
78-14	Cruelty to Animals	7	3-25
78-22	Removal of Dead Animals	7	3-25
FIRE ORDINANCES			
2-159	False Fire Alarm (Per Count)	10	5-25
2-159.1	Driving over Firehose Prohibited	3	1-03
2-159.6	Fire or Police Officers - Obstruct, Hinder or Battery, Damage to Fire or Police Equipment	10	3-25
HEALTH/LITTER VIOLATIONS			
2-103	Right of Entry (Health Commissioner) (First Offense)	4	3-05
2-103	Right of Entry (Health Commissioner) (Second Offense)	7	3-10
64:01 thru 64.12	Mobile Home/Campground	7	1-25
68-2	Food Sanitation	13	3-25
68-3	Impure or Adulterated Food, Drugs, Water or Ice	13	3-25
68-4	Food License	13	3-25
74-1	Food Peddlers	7	1-25
75-1	Self-Service Laundries	4	1-25
75-20 and (6)	Swimming Pool/Places	7	3-25

**MILWAUKEE MUNICIPAL COURT DAY-FINE
BENCHMARK SCALES (Cont'd)**

Section Number	Ordinance	Median Benchmarks	Benchmark Range
76-20	Dry Cleaners	4	1-16
77-5 and 77-6	Pest Control Operators	4	3-5
78-2(2)	Bring or Keep Dangerous Animal in City	4	1-10
78-2(3)	Number of Animals Permitted	5	1-10
78-11(4)	Fail to Destroy Vicious Animal	7	3-25
78-12	Control Rabid Animals	7	1-10
78-16	Bird Feeding	3	1-10
78-17	Pigeon Harborage	4	0-10
79-2(1) thru 79-2(12)	Solid Waste Collection and Storage Regulations	3	1-25
79-3(2)	Waste Containers Required (Commercial)	3	1-25
79-4(1)(a)	Portable, Rodent-Resistant Waste Containers Required	3	1
79-4(1)(b)	Improper Garbage Disposal	3	1
79-5(1)(a)	Proper Location of Waste Containers; House Numbers Posted on Buildings Adjacent to Alleys	3	1
79-5(1)(b)	Access to Waste Containers	3	1
79-9(1) and 79-9(4)	Private Waste Container Regulations	4	1-25
79-10(1), 79-10(2), 79-10(3)	Unlawful Dumping or Littering	4	1-25
79-11	Litter on Public Street or Property	3	1-25
79-12	Littering Upon Any Premises	3	1
80-6(1)	Discharge of Offensive and Hazardous Substance—Public Nuisance	13	3-25
80-19	Nuisance Lights, Residential Property	6	4-25
80-29	Sandblasting	13	3-25
80-31	Compost Pile (Flies)	3	1-03
80-45, 80-46, 80-46.5	Dumps	4	1-10
80-48(2)	Lumber on Ground	3	1-03
80-49	Nuisance Vehicles	4	3-05
80-64(1) and 80-68	Noise (e.g. Industrial, Ventilation)	13	3-25
80-65(4)	Petition of Noise Nuisance (e.g. Music, Bands)	4	1-10
82-2	False Weights and Measures	13	3-25
82-14	Weights and Measures License	7	1-25
84-45	Filling Stations (Licensing)	7	1-25

**MILWAUKEE MUNICIPAL COURT DAY-FINE
BENCHMARK SCALES (Cont'd)**

Section Number	Ordinance	Median Benchmarks	Benchmark Range
236-38(2)	Discharge/Cause Discharge Hazardous Substance on Public Street/Property	45	0-100
LIQUOR AND TAVERN VIOLATIONS			
84-43	Cigarette and Tobacco License	10	1-25
84-54	License and Permit Required, Video Game and Amusement Machines	10	1-25
87-2	Pool and Billiard Hall License	10	1-10
90-3(1)	License Required—Liquor Basic Requirement	16	0-25
90-3(2)	Separate License Required	16	0-25
90-4(1)	Class "A" Liquor Consumed Off Premises Original Container	7	0-25
90-4(2)	Class "B" Tavern—Consumed on Premises and Sale in Original Containers	7	0-25
90-4(2)(b)(2)	Consumption from Bottle on Class "B" Premises	4	1-25
90-4(3)	Class "B" Tavern—Service Bar—at Tables Only	16	0-25
90-4(4)(a)	Class "B" Manager's License Required	16	0-25
90-4(4)(b)	Manager's Responsibility	16	0-25
90-4(4)(c)	Licensee's Responsibility	16	0-25
90-4(6)(a)	Class "B" Fermented Malt License—License Required	10	0-25
90-4(7)	Special Class "B" Malt License—License Required	10	0-25
90-4(8)	Class "C" Malt Wholesaler License— License Required	10	0-25
90-4(9)	Special Class "C" Malt Wholesaler— License Required	10	0-25
90-4(10)	Class "D" (Bartender) Operator's License Required	16	0-25
90-4(11)	Class "D" (Bartender) Special Temporary License	16	0-25
90-5(2)	Truth of Statements and Affidavits— Falsifying	31	0-25
90-5(12)	Report of Changes Required	16	0-25
90-6(2)	Residency Requirements	16	0-25
90-8	Responsible Person Upon License Premises	10	0-25
90-9	Collusive Agreement/Hidden Partners	5	0-05
90-13	Class "B" Tavern —Number of Licenses Permitted	16	0-25

**MILWAUKEE MUNICIPAL COURT DAY-FINE
BENCHMARK SCALES (Cont'd)**

Section Number	Ordinance	Median Benchmarks	Benchmark Range
90-15(1)	Class "A" Liquor—Hours of Sale	16	0-25
90-15(2)	Class "A" Malt License—Hours of Sale	10	0-25
90-15(3)	Class "B" Tavern—Patrons After Hours	7	0-25
90-15(3)(b)	Hours for Sale in Original Package	7	0-25
90-16	Display of License	10	0-25
90-27(1)(c)	Immediate Entry for Police, Local and State Authorities	10	0-25
90-27(1)(d)	Safe Egress from All Entrance Doors and Serving Rooms	10	0-25
90-27(2)	Adjacent Rooms to Licensed Tavern	10	0-25
90-27(5)	Illumination During Conduct of Business	10	0-25
90-28	Misleading Advertising Prohibited in Class "B" Taverns	10	0-25
90-32	Fraud on Tavern Keepers Prohibited	4	3-25
90-33(1)	Tavern Amusement License Required	4	0-25
90-33(2)	Instrumental Music License Required	4	0-25
90-33(3)	Prerecorded Music Dance License	4	0-25
90-33(4)	Prerecorded Music Machine Premises License (Recorded Spins)	7	0-25
90-33(5)	Tavern Dance Hall License Required	7	0-25
90-33(6)	Special Tavern Dancing Permit	7	0-25
90-36(1)(a)	Hours for Music—Tavern Amusement	7	0-25
90-36(1)(b)	Hours for Music—Tavern Ballroom Premises	7	0-25
90-36(1)(c)	Hours for Music—Instrumental, Tavern Dance, Phonograph	7	0-25
90-36(1)(d)	Hours for Music—Prerecorded Music	7	0-25
90-36(3)	Advertising of Dancing	7	0-25
90-36(4)	Posting of Occupancy Capacity	4	0-05
90-37(1)	Pharmacist's Liquor Permit—Application, Quantity	5	2-10
90-37(2)	Pharmacist's Liquor Permit—Qualifications, Resident	5	2-10
90-37(4)(a)	Pharmacist's Liquor Permit—Register to be Kept	5	2-10
90-37(4)(b)	Pharmacist's Liquor Permit—Sales to Be Recorded	5	2-10
90-37(5)	Pharmacist's Liquor Permit—Hours for Sale	5	2-10
90-38	Medical Prescriptions Limited—False Prescription	5	2-10
90-39(1)	Alcoholic Beverages Prohibited on Any Premises under Jurisdiction of Board of School Directors	5	0-10

**MILWAUKEE MUNICIPAL COURT DAY-FINE
BENCHMARK SCALES (Cont'd)**

Section Number	Ordinance	Median Benchmarks	Benchmark Range
90-39(1)	Juvenile under Legal Drinking Age Prohibited from Having Alcoholic Beverages on Premises under Jurisdiction of School Directors	4	0-03
91-2	Soda License or Sticker Required	10	1-25
91-5(1)(2)	Transfer of License	10	1-25
PUBLIC DANCE HALL VIOLATIONS			
108-2	Public Dance Hall—License Required	4	1-05
108-4	Public Dance Hall—Posting License	4	1-05
108-7	Public Dance Hall—Filing Permit	4	1-05
108-7.5	Public Dance Hall—Responsibility of Permittee	4	0-05
108-10	Public Dance Hall—Permitting Persons under 17 Years on Premises, Misrepresenting Age	4	1-05
108-11	Public Dance Hall—Closing Hours	4	1-05
JUVENILES (14 to 18 Years of Age)			
	Non-traffic violations, except for violations of 90-18(2), 90-18(3), 90-19, and 90-39(1)	3	0-01

APPENDIX B

MILWAUKEE MUNICIPAL COURT MEANS INVESTIGATION

MILWAUKEE MUNICIPAL COURT
MEANS INVESTIGATION

I have been advised that the information I provide is not confidential and will be placed in a public court record. I understand that the information may subject me to legal liabilities.

Signature: _____

Name _____

Age _____ Sex (M) (F)

DOB ____/____/____

Interview Date ____/____/____ Interviewer _____

Street _____ City/State _____ Zip _____

Dependents: (Check all that apply)

☐ Spouse ☐ Parent ☐ Grandparent
☐ Children(#) ☐ Other Relatives ☐ Girlfriend/Fiancee
☐ Other Dependent _____

Comments: _____ Total No. of Dependents _____

Who can verify No. of Dependents? _____ Phone# _____

Source of Income:

☐ GA ☐ AFDC ☐ SSI/SSN
☐ Pension ☐ No Source ☐ Other Benefits _____
☐ Unemployment Comp. ☐ Other
☐ Part Time Employment
☐ Full Time Employment
☐ Spouse/Parents Earnings (\$ _____) (Only if defendant has no income.)

Monthly Income: (for next 3 months) \$ _____ Gross () Net ()

If no source of Income - Supported by? _____

Place of Employment _____

Address _____ Phone # _____

Who can verify your source of income? _____

Phone# _____

Do we have your permission to verify: source of income (Y) (N), # of Dependants (Y) (N).

Signature: _____

APPENDIX C

DAY-FINE WORKSHEET

DAY-FINE WORKSHEET

A. Setting the Number of Day-Fine Units

Record the number of benchmarks imposed by the Municipal Judge.

A. _____ Number of Day-Fine Units.

B. Setting the Value of One Day-Fine Unit: Net Daily Income by Family Size

1. Net Daily Income:

The offender's net daily income is the reported net income (e. g., the take-home pay in a regular paycheck) divided by the period of time that income covers. (A weekly paycheck covers seven days; a biweekly paycheck covers 14 day, a monthly income covers 30 days.)

a. Net Income: \$ _____

b. Periodicity: _____ days

Net Daily Income: \$ _____
(a divided by b)

2. Number of Dependents Including Self:

The number of persons for whom an offender is financially responsible is the sum of the offender plus all other persons who derive sole support from his or her income. For an offender who is a dependent (a housewife; a student), the number includes the head of the household and each supported family member, including the offender. (e.g., An offender supports a wife and two children; his family size is four. A housewife is supported by her legal or common law husband and cares for two children; her family size is four. A young man supports himself from employment income though living with his parents and brother; his family size is one.)

Family Size: _____

On table two (Table for Determining the Value of One Day-Fine Unit), locate the day-fine unit value by cross-referencing the net daily income figure (ranged down the left-hand column) with the family size (ranged across the top).

B. Day-Fine Unit Value: \$ _____

C. Calculating the Amount of the Day-Fine

Multiply the number of day-fine units (A) by the value of a single day-fine unit (B) to compute the amount of the day-fine to be imposed:

C. Day-Fine Amount: \$ _____
(A times B)