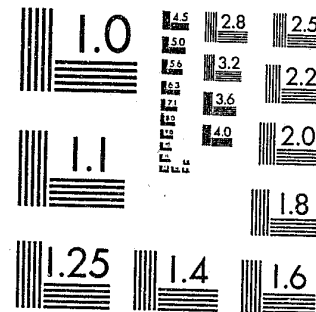


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National Institute of Justice

Research Report

Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction

94812

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Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction

by

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The Vera Institute of Justice
New York, New York
and
The Institute for Court Management
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November 1984

U.S. Department of Justice
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ABSTRACT

This Report presents findings from an exploratory study of law and practice with respect to the use of fines as a sanction for criminal offenses. The principal sources of empirical data are a national telephone survey of administrators in 126 trial courts in 21 states; site visits, for interviews and observation, to 38 courts in seven states; and examination of a sample of case records in New York City's five limited and five general jurisdiction trial courts. The study has also taken account of secondary materials including federal and state statutes, appellate court decisions, and books and articles dealing with sentencing. Particular attention has been given to the recent experience of three Western European countries--England, Sweden, and West Germany--that use fines very extensively as a sentence for criminal offenses.

The data indicate that patterns of fine utilization in the United States vary widely, even within the same state or metropolitan area, as do practices with respect to fine collection and enforcement. Despite this diversity, however, there are some common themes. First, fines are widely used as a criminal sanction and their use is not confined to traffic offenses and minor ordinance violations. Many American courts depend heavily on fines, alone or as the principal component of a sentence in which the fine is combined with another sanction. Fines are used most extensively in limited jurisdiction courts, but some courts that handle only felonies also make considerable use of them. Practitioners who favor broad use of the fine note that it is less costly than jail or probation and maintain that it can be both a meaningful punishment and an effective deterrent.

Second, although large amounts of revenue are involved--probably well over a billion dollars annually--very few courts have reliable information on fine utilization and enforcement. Few judges or court administrators have a sound working knowledge of aggregate fine amounts, collection rates, or the effectiveness of particular approaches to enforcement. Development of sound fines management information systems could significantly enhance the capacity of courts to use, collect, and enforce fines effectively.

Third, while the poverty of offenders is frequently cited as an obstacle to broad use of fines, there is evidence that a number of courts frequently impose fine sentences upon offenders with limited means and are relatively successful in collecting them. Factors associated with high collection rates include limited use of installment payment plans, allowance of relatively short periods for payment of the fine, and strict enforcement policies that include imposition of a jail term in the event of default.

Several Western European countries have adopted sentencing policies that explicitly make fines the sentence of choice for offenses (including some crimes of violence) that would result in jail sentences in many American courts. In West Germany, legislation designed to minimize the imposition of custodial terms of less than six months has been coupled with adoption of an innovative "day-fine" system. Based on a Swedish idea, the day-fine system enables fines to be set at amounts which reflect the gravity of the offense but also take account of the resources of the offender. This has resulted in greater fine use and has contributed to a dramatic drop in the number of short-term custodial sentences imposed by the courts. The study recommends experimentation with this approach in American courts. More generally, the study recommends a fresh look at laws and practices affecting the use and enforcement of fines and other monetary sanctions, with a view to development of a more consistent overall approach that will (1) provide expanded sentencing options; (2) reduce reliance on short-term jail sentences; and (3) better meet the needs of crime victims.

ACKNOWLEDGEMENTS

A research effort as complex and multi-faceted as this one draws upon the talents of many and the valuable support of numerous others. It is impossible to apportion specific thanks to individual members of the Project Staff for their particular contributions to a process that was so genuinely collaborative. As described in the Introduction of this report, there were many different but interwoven parts to the study. The work done by each staff member supported and enriched the work being carried out by all the others as we moved jointly, and sometimes haltingly, to explore a part of the criminal justice system here and abroad that had received very little previous attention. Coordinating this effort, which was taking place simultaneously in New York, Denver and London would have been impossible without the readiness of each member of the staff to share generously of his or her individual talents, and to offer understanding (and patience) in response to the problems being unraveled by other parts of the project.

Michael E. Smith and Harvey E. Solomon, Directors of the Vera Institute of Justice and the Institute for Court Management, respectively, deserve our special thanks for their support and general good humor in the face of the project's ever-broadening horizons and its occasionally chaotic appearance. They provided encouragement and wise advice as the work progressed, and their suggestions were enormously helpful as we began to pull the many pieces together to draft the final report.

George F. Cole of the University of Connecticut and Malcolm M. Feeley of the University of Wisconsin and Daniel J. Freed of Yale University Law School also offered useful comments in response to initial drafts of the

report. The structure and content of this final document owes much to their careful and thoughtful reading of earlier and far rougher drafts. The detailed reactions and insights of Jonathan D. Casper of the University of Illinois, a principal reviewer of our next to final effort, were particularly valuable in helping us to weave the threads of the study together so as to address the concerns and interests of diverse audiences. Needless to say, none of these individuals is responsible for the difficulties that still remain in the text, for our interpretive leaps in the face of sometimes sketchy evidence, or for the directions taken by our policy suggestions.

In addition, we would like to thank David Moxon of the British Home Office Research and Planning Unit for his comments on the final draft of this report. He is one of the few others who has undertaken empirical research in the area of criminal fines, and we appreciate his efforts on behalf of our work. We are also grateful generally to the Research and Planning Unit of the Home Office for its cooperation with the several parts of this study that were conducted through the Vera Institute's London Office. The Home Office has facilitated Vera's research efforts in England for a number of years. It has had a continuing interest in issues of fine use and enforcement, and our own research has benefitted substantially from its past experience with research and policy-making in this area of sentencing.

We would also like to take this opportunity to thank a number of people at the National Institute of Justice for their important contributions to this project. While such thanks are often forthcoming in research reports of this kind because of the Institute's central place in the financial support of research, it is particularly appropriate in this case. In addition to

providing the primary funding for this project, the Institute provided much of the initial stimulus and conceptual background for the research. Scholarly and policy interest in the area of the use and enforcement of criminal fines was quite limited at the time the Institute issued its detailed and thoughtful request for a research proposal on the subject. Pre-publication inquiries about the results of our work, which are already coming from judges, court administrators, scholars, and the United States Senate, suggest that the Institute's interest in encouraging research on criminal fines was timely. We very much appreciate the help and guidance along the way of Bernard Auchter and Jonathan Katz, and also of Betty Chemers, Sidney Epstein and, of course, Cheryl Martorana.

Finally, although the National Institute provided the majority of the funds for this study, we also wish to express our thanks to both the City of New York and to the German Marshall Fund of the United States for their financial support of the overall project. The City of New York provided Vera with a valuable opportunity to deepen the empirical base of this research by collecting extensive court record data on the New York's experiences with fine sentences and their enforcement. The resulting body of information is the only one of its kind on an American jurisdiction. The German Marshall Fund's support enabled us to expand the scope of the research by collecting original data on fining in English magistrates' courts and by visiting courts and researchers in the Federal Republic of Germany and Sweden where, by national policy, fines are the sentence of choice for most criminal offenses.

The National Institute was originally committed to the idea that the research it proposed should review the experience of England and Western Europe with criminal fines in order to better inform American policy-making. Thanks to the German Marshall Fund, we have been able to do this more fully than was initially anticipated, and we strongly believe that the National Institute's initial perspective was correct. These countries do provide important insights into issues of central concern to American policymakers who want to explore further the use of fines and other monetary penalties in American courts and to understand more about the closely related issues of collection and enforcement. We hope this report contributes to this exchange of knowledge and experience, and that it will stimulate further American research and policy development in this area of sentencing.

Sally T. Hillsman
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CHAPTER I

INTRODUCTION: THE FINE AS A CRIMINAL SANCTION

A. Introduction

Sentencing policy in the United States has undergone major alteration in many jurisdictions with the introduction over recent years of sentencing guidelines, mandatory minimum sentences, and determinate sentencing schemes. With these changes, mainstream sentencing theory and legislative activity have shifted away from the concepts of individualized justice and rehabilitation that have dominated American sentencing philosophy during most of the twentieth century, and toward an emphasis on incapacitation, deterrence and punishment (e.g., Von Hirsch, 1976, 1981; Fogel, 1976; California Penal Law §1770). The full consequences of these shifts in theory and law have yet to be determined. It appears, however, that they have contributed to growing strains on the budgetary and correctional resources of many communities, by adding substantially to prison and jail populations (Bureau of Justice Statistics, 1982; Galvin and Polk, 1982).

One result has been a concern with targetting scarce jail and prison space for those offenders who appear to be most deserving of it. Collaterally, there has been a renewed interest in identifying meaningful alternatives to incarceration. Given the limitations on custodial facilities, there is a perceived need for a wider range of enforceable sanctions for offenders whose behavior calls for more than admonition, but where incarceration may not be necessary or desirable. Within

the realm of such alternatives, there has been particular emphasis on sanctions that are relatively new, especially community service and restitution. Among traditional sentencing standbys, however, little policy attention (and even less research attention) has been paid to the fine as a punishment, or as an alternative to jail. Yet the fine is one of the oldest, and possibly one of the most widely used, ways of punishing people without relying on incarceration.¹

The reasons for this inattention to the fine as a criminal penalty are complex. They include widely held notions that the fine is neither rehabilitative (though restitution is often thought to be) nor likely to deter and that, as a punishment, the effectiveness of the fine is limited by constitutional restrictions on its use and enforcement. It is often thought that, constitutionally, many criminal defendants may not be fined because they are indigent, and that courts cannot collect the fines they do impose. These limitations are thought to diminish the value of a fine as punishment and also (when fines are disregarded by defendants) to encourage disrespect for the court. Related to these concerns is a prevalent notion that if courts were to attempt to enforce

¹ Almost a decade ago, a national commission called attention to the potential of the fine as a sanction. It observed that,

Properly employed, the fine is less drastic, far less costly to the public, and perhaps more effective than imprisonment or community service (National Advisory Commission on Criminal Justice Standards and Goals, Report on Corrections, 1973:570).

Despite such endorsements, no unanimity of opinion has developed in the United States on the circumstances under which fines should be imposed. There has continued to be what one recent observer has called "an a priori distrust of fines" in American policy discussions (Gillespie, 1981:201, emphasis in original), and a widespread belief that fines are used relatively infrequently in criminal cases (e.g., McCrea and Gottfredson, 1974:17).

fine orders by relying on the use of imprisonment, they would face insurmountable constitutional barriers when offenders are poor. Finally, the general lack of interest in exploring the use of fines as criminal penalties in the United States has been reinforced by the widely held belief that the difficulty of collecting fines, coupled with the use of jail as the principal enforcement method, means that imposition of a fine as a sentence is too often simply a drawn out, circuitous way of incarcerating people.

While there is undoubtedly some merit to each of these concerns, they rest upon insufficient empirical evidence to be the basis for policy, do not take account of the wide range of ways in which fines are currently used, and disregard the possibility that fines may be an alternative to custody at least under some circumstances. However, there has been no way to assess the extent to which these concerns reflect real problems associated with routine fining practice. Despite a substantial increase during the last decade of empirical research on courts and sentencing practices (for example, Eisenstein and Jacob, 1977; Church et al., 1978; Feeley, 1979; Ryan, 1980; Alfini, 1980; Ragona et al., 1981; Vera, 1981), there exists no body of systematic knowledge about how American courts use fines as sentences or about administrative practices and problems related to their use.

It is generally recognized that fines are widely imposed by American courts for routine traffic-related offenses and for violations of municipal ordinances. Indeed, it is likely that heavy use in these areas has obscured the extent to which fines are imposed in more typically criminal cases. Even in criminal matters, it is relatively easy,

upon reflection, to see a fine as an appropriate sanction for some crimes. For example, fines may be used for economic offenses (e.g., commercial fraud), particularly if ill-gotten proceeds have not otherwise been recovered, or for first offenders when there is no necessity to impose more punitive jail sentences. But what about the rather wide range of other non-trivial, non-violent offenses that are the staple of most criminal courts in the United States?

Data from Western Europe, particularly England and the Federal Republic of Germany, suggest that these countries make extensive use of fines, and that the fine is their sanction of choice in most criminal cases, including some crimes of violence (Carter and Cole, 1978; Gillespie, 1981). It is particularly notable that both England and Germany have made it an explicit national sentencing policy to reduce reliance on short-term incarceration by expanding the use of fine sentences (Casale, 1981; Gillespie, 1980; McKlintock, 1963; Hood, 1962). The data on Germany reported by Gillespie show that in a two year period following revision of the German penal code (1968-1970), courts there reduced their reliance on short term jail sentences from 20 percent to four percent, and increased their use of fines from 63 percent to 84 percent; the data show further the resulting high use of fines continued throughout the 1970s (1980:21).

In contrast, we know little about the extent to which fines are used as criminal penalties across the many different types of American courts. We know even less about how they are collected and enforced, and about their real or perceived efficacy as sanctions. Fining thus remains a rather subterranean part of the American dispositional

process, a sentence that has received altogether too little empirical examination for its actual and potential role in the sanctioning system.²

B. The Study

It was this large gap in useful empirical information about the American use and enforcement of fines in criminal cases that led to the present study. The research upon which this report is based was a collaborative effort of the Vera Institute of Justice and the Institute for Court Management, with primary funding from the National Institute of Justice.³ The National Institute requested proposals to study the use of fines because it felt the lack of information impeded serious policy consideration of the feasibility of expanding fine use (National Institute, 1980). Vera's interest in studying fining grew out of its involvement in empirical research on the dispositional process, particularly in the New York City courts, and out of its long-standing concern with exploring the feasibility of alternative methods of

² In this context it is intriguing to note that there is currently a widespread tendency across the country for judges, legislators, and other policymakers to advocate the expanded use of monetary restitution orders in the sentencing of criminal offenders (e.g., Forer, 1980), and that, for many, this preference exists side-by-side with deep-seated reservations about the use of fines. Yet it is obvious (and significant) that both types of monetary sanctions raise some of the same philosophical and practical questions of equity and enforcement.

³ Additional funds were provided to the Vera Institute by the German Marshall Fund of the United States, for the collection of new data on fine use in England, and by the City of New York, for a study of fine use and enforcement in the city's criminal court; both these parts of the research are discussed below.

handling cases and sentencing offenders.⁴ The Denver-based Institute for Court Management (ICM) has been involved in issues of court administration and management for a number of years, and was particularly interested in the problems courts face collecting and enforcing fines once they are imposed.

We decided to make this first exploration into American fining practice as broad as possible because of the paucity of information on the use and enforcement of fines in the American criminal justice system and because of the enormous diversity of practice that characterizes American courts. The work we have done, therefore, is a preliminary, largely descriptive examination of several key topics: how fines are used by judges as criminal penalties; how they are collected and enforced in different types of courts around the country; how the legal frameworks within which fines are imposed and enforced are structured; how those involved in the day-to-day work of the courts view fines--what they regard as the principal advantages and disadvantages of using them as criminal sanctions; what problems with fining arise because of the poverty of so many offenders; and, finally, what experiences Western European countries have had in recent decades in relying heavily on fines as criminal penalties.

We recognized from the beginning that this attempt to take a broad view would produce materials having some important limitations.

⁴ See, for example, Vera's monograph on the disposition of felony cases in New York City's courts (Vera, 1981); and Vera's other work in the areas of the pretrial diversion of felony cases (Baker (Hillsman) and Sadd, 1980), arbitration and mediation (Vera and Victim Services Agency, 1980), the preparation of felony cases by the police (McElroy, Cosgrove and Farrell, 1981), and the development of community service sentencing as an alternative to short-term incarceration (Vera, 1981).

Given the time and financial constraints of this study, our data tend to be uneven in their depth and in the extent to which they support generalizations; however, they also are often rich in their descriptive content. This report documents what has been a fairly wide-reaching but nevertheless preliminary excursion into a virtually unexplored territory. It has been a journey that has proven to be more interesting and more provocative than we ourselves had expected.

C. The Central Questions and the Research Methods

The Context of American Fine Use

We began our exploration into American fining practices by trying to develop a systematic picture of the legal framework within which the use of fines in criminal cases takes place and an understanding of the historical and philosophical perspectives underlying American law and practice in this area. We approached this sizeable task in three ways.

First, we reviewed all the U.S. state and federal statutes (including the District of Columbia) for relevant content: the criminal offenses for which fines are authorized as sentences, the amounts and collection procedures permitted, the responses to default that may be used, the provisions provided for the distribution of fine revenues, and other related issues. These legal provisions (current through 1980) were extracted from the statutes, recorded, and then coded to reduce the many specific laws into a standard format that would allow us to compare states. In addition, we reviewed recent Congressional proposals to see what directions revisions in the federal criminal code were taking.

Because criminal offenders' poverty is so clearly an issue in this area of sentencing, we also sought to get a better grasp of the

legal background of these statutes by examining judicial opinions dealing with the imposition of fines on the poor and the jailing of those who default in fine payments, particularly if they are indigent. Our second research activity, therefore, was a review of relevant state appellate court decisions and those of the U.S. Supreme Court.⁵

Our third approach to a better understanding of the legal and historical context within which fining takes place was to examine the wide range of published materials that have dealt with sentencing in general, and fines in particular. These included model criminal codes and accompanying commentaries, government commission reports, and books and articles of both a legal and a social science nature. Our goal was to gain a sense of what purposes fines have been said to serve as criminal sentences, what advantages and problems they are thought to present, and what empirical knowledge has been generated about their use, collection and enforcement. It did not come as a surprise that this work revealed the practical and constitutional problems of fining poor offenders to be widely viewed as the major constraint on the use of fines as criminal penalties, and that there is disagreement about the exact nature of the constitutional problems. It also confirmed that there is very little empirical data on actual fining and enforcement practices which has made it difficult for policymakers to assess the extent or type of practical difficulties faced by courts in fining offenders, including the poor. However, there have been a few very recent studies that have useful data and we have sought to incorporate these findings.

⁵ Simultaneously, we also reviewed case decisions about the proper use of fine revenues, the second major dimension of fining that has generated significant case law.

American Fining Practices

The second task of our exploration into American fining practice was to develop empirical materials that would help fill the gap in our knowledge about how fines are used, collected, and enforced in different types of courts across the country. For sentencing policy to move forward in this area, there is a need to answer such questions as: To what extent, and under what circumstances, are fines now utilized as criminal sanctions? What factors are associated with relatively extensive and relatively limited fine use? What problems are encountered by courts when they use fines with poor offenders? What procedures are followed to collect and to enforce fines, and what factors are associated with their success?

Designing a research strategy to address these questions presented serious difficulties because official statistics on the details of fine use, on rates of collection, and on methods of enforcement are not typically kept by American courts.⁶ Thus, it is difficult to answer these questions fully without extensive original data collection based upon samples of case records from the many different types of courts that make up the very diverse American court system. Given the time and budgetary constraints of this project, we chose an alternative strategy: to generate systematically several different types of more easily acquired data which, when pieced together, would give us at least a general empirical picture of fining practices around the country. The three different but complementary methods we used to collect this

⁶ Note, for example, that in a recent effort to compare the use of fines in the United States with that of Western Europe, Gillespie was forced to rely on data from the Federal District Courts and the Superior Court of Washington, D.C. to reflect American practice; he could find no other sources of relevant information (1981:198-199). Our own research confirms the seriousness of this problem; it is extremely difficult to assemble systematic information on practices about which few officials anywhere in the country keep records.

information were as follows: a national telephone survey of 126 courts in 21 states; on-site visits to 38 courts of various types in seven states; and an in-depth, case record study of fine use and collection in New York City's five limited and five general jurisdiction courts. Each of these methods deserves discussion at this point because we draw heavily on them in this report; each method has certain strengths and certain limitations for addressing the questions raised above. Although far from definitive, the data we have collected together provide interesting, sometimes surprising, and heretofore unavailable insights into how fines are used and collected around the United States.

We undertook a telephone survey of 126 municipal courts and state- or county-funded limited jurisdiction and general jurisdiction felony courts in 21 states in order to generate data swiftly and economically on fine use, collection and enforcement in criminal cases across various geographic regions of the country and different types of courts. The specific courts were selected for their statutory as well as their geographic and jurisdictional diversity.⁷ Using its national

⁷ A two-stage process was used to select courts to be contacted. First, states were classified according to their geographic location and, based upon our statutory review, the extent to which their statutes authorized extensive or relatively limited fine use and whether they had particularly interesting or unique provisions for fine collection and enforcement. Twenty-one states were selected based upon their diversity along these dimensions. Second, within each of the states selected, two general jurisdiction trial courts and four limited jurisdiction courts were selected, with two of the latter being municipal courts and the other two being state- or county-funded courts that handle misdemeanor cases. Although generally the same approach was followed in all 21 states, it varied slightly in some places. A complete list of the jurisdictions contacted is found in Appendix B, as is Table B-1 which shows the number of each type of court surveyed by region of the country.

network of contacts in court systems, ICM contacted the chief clerk or court administrator in each jurisdiction and interviewed that individual (or an appropriate deputy) by telephone using a structured questionnaire (see Appendix B). These officials were asked how fines were used in their courts, with what frequency, and for what types of offenses. They were also asked in detail about their courts' fine collection and enforcement practices and their success. Finally, they were questioned about their attitudes toward the use and enforcement of fines in their jurisdictions.

We know from recent empirical research on courts that data based upon the perceptions of court actors about what happens in their systems cannot substitute in accuracy of detail for in-depth studies based upon actual case records. However, the interview data do enable us to describe major variations across different types of courts and regions of the country in the broad patterns of fine use, collection and enforcement strategies, and administrators' general reactions to and attitudes about those practices. The general picture of fine use and enforcement patterns provided by the survey also tends to be supported by our other sources of data (i.e., the site visits and the New York City case record research). However, the specific details about each jurisdiction obtained from the telephone survey require further empirical verification, and we will offer some suggestions at the end of

this report about what directions research of this sort might take.⁸

On-site visits were made to 38 county, municipal, city and federal district courts in order to obtain a more in-depth understanding of particular fining policies or practices. Some sites were selected because our statutory review or telephone survey indicated that their practices were particularly interesting (e.g., Delaware's work program for fine defaulters, and Georgia's use of probation officers to enforce relatively high fines imposed upon relatively poor people). Other sites were selected because they were close to Vera or ICM and appeared to illustrate a particular type of court (e.g., New York City with its relatively decentralized practices, high case volume, and poor inner-city offender population, and Denver with its relatively more centra-

⁸ We chose to interview senior court administrative personnel (chief clerks or court administrators) for both practical and substantive reasons. It was by no means unimportant that these individuals were relatively easy for ICM to identify personally; that they were accessible to contact by telephone; and that, as system managers, they were generally willing to participate in long, detailed, and often difficult interviews conducted under less than optimal conditions. Their cooperation was also encouraged by their familiarity with ICM's work of assisting courts to improve their administrative operations. Just as important, however, was our judgment that a chief court clerk or administrator would be as knowledgeable as any other single individual in a court about the pattern of that system's reliance on different types of dispositions and sanctions, or at least that he or she would be no more prone to inaccurate or distorted perceptions than any other likely candidate for the interview. Furthermore, we felt it was extremely important for the purposes of the study to know about fine collection and enforcement practices. Coming after the imposition of a fine as a sentence, these activities are generally the responsibility of the court clerks and administrative staff, and our exploratory interviews suggested that judges tend to be less than knowledgeable about the details of these practices and the problems they entail. We recognized, however, that administrative personnel are not as likely as judges to be informed about why certain sentences are imposed and what expectations are held about different sanctions. Therefore, we relied upon our actual visits to a wide variety of courts to collect information about judges' perceptions of these sentencing matters.

lized practices, more moderate volume, and less economically marginal population).⁹

In all visits, interviews were conducted with judges, court staff, prosecutors, defense attorneys, and probation officers. We asked about the use of fines in local courts, and about their collection and enforcement activities. Actual sentencing proceedings were observed where possible. In addition, court clerks' offices and those of probation departments, separately-funded court-supported projects (e.g., work alternative programs), municipal offices and regulatory agencies were visited to observe other fine-related practices. In each court we asked for official statistics to document what we were told about practices. However, as we have already indicated, such systematic verification was rarely possible; with very few exceptions, court record systems are simply not organized to provide the necessary data. As a result, we rely upon the information collected from the site visits primarily to illustrate the diversity of practice suggested by the survey data, to

⁹ Courts visited during the study were: New York City: New York County Criminal Court, New York County Supreme Court, Bronx County Criminal Court, Bronx County Supreme Court, Kings County Criminal Court, Kings County Supreme Court, Queens County Criminal Court, Queens County Supreme Court, Richmond County Criminal Court, and Richmond County Supreme Court; New Jersey: Trenton Municipal Court and Newark Municipal Court; Delaware: Court of Common Pleas (Wilmington); Wisconsin: Milwaukee Municipal Court, Milwaukee County Circuit Court, and Dane County Circuit Court (Madison); Arizona: Phoenix Municipal Court, Maricopa County Justice Courts (Phoenix), Maricopa County Supreme Court (Phoenix), Tucson City Court, Pima County Consolidated Justice Court (Tucson), and Pima County Supreme Court (Tucson); Georgia: Fulton County State Court (Atlanta), Fulton County Superior Court (Atlanta), City Court of Atlanta, Clayton County Superior Court (Jonesboro), and Alcovy Circuit Superior Court (Monroe); Colorado: District Courts in Denver and Boulder Counties, Denver County Court, Boulder County Court, Arapahoe County Court, Boulder Municipal Court, and Englewood Municipal Court; United States District Courts: New York Southern District, New York Eastern District, and Washington, D.C. District Court.

examine in detail how particularly interesting practices operate, and to raise questions about what might be associated with the variations in practice we observed across courts.

Finally, separate funding to the Vera Institute from the City of New York made it possible for us to carry out original statistical research on fine use, collection and enforcement in the five limited jurisdiction (misdemeanor) courts and five general jurisdiction (felony-only) courts within New York City's geographical boundaries. We drew a sample of all 2,165 arrest cases that were sentenced in the criminal parts of these ten courts during one week in October 1979.¹⁰ The extensive data we compiled on each case from official records included information on arrest and sentence charge, the sentence imposed, fine payment history, warrants for nonpayment, criminal history of defendants and, where available, defendants' employment status. Thus, we were able to examine how fines are imposed in relation to other sanctions for the same and different arrest and conviction charges, and we were able to track the success of collection and enforcement efforts for up to one year after imposition of the fine.

The analysis of these New York City court data provides both a relatively detailed description of the fine enforcement process and a reliable estimate of these courts' collection success. To the best of

¹⁰ New York City is composed of five separate counties: New York County (Manhattan); Kings County (Brooklyn); Bronx County; Queens County; and Richmond (Staten Island). Each county has its own elected District Attorney. Its court system is composed of a Criminal Court in which, with a few non-relevant exceptions, all criminal cases begin but only misdemeanor and certain violations are processed to disposition, and a Supreme Court which is a general jurisdiction trial court for felony cases. Very importantly, the cases included in our sample are only those following an arrest (i.e., they do not include summons cases) and they exclude cases involving routine motor vehicle or municipal ordinance violations.

our knowledge, similar information about fining in American criminal cases is not available elsewhere. While their uniqueness makes the New York City data extremely interesting and valuable, it also means that the sample (which reveals both similarities and differences among the city's various courts) cannot be compared directly with or generalized to other American courts. However, the results are provocative and raise serious questions about the untested assertions scattered throughout the American sentencing literature about the uncollectability of fines in cases other than those involving routine traffic and municipal ordinance violations.

Fining In Western Europe

The third task in our exploration of American fining practice was to consider the practical and policy implications of our data in light of the recent experience of several Western European countries which use fines as the sentence of choice in criminal cases. England and the United States share a common legal tradition and, despite considerable differences in criminal procedure and law, the British system remains the most readily comprehensible from the American viewpoint. While the Swedish system is more idiosyncratic, it has attracted attention in the United States because it has been a pioneer in legal thought and practice. Recently, its development of a "day fine" system as a way of trying to impose fines equitably upon defendants of differing economic circumstances has drawn the interest of American and British policy-makers. Fortunately, the Federal Republic of Germany has adapted the Swedish day fine to its own court system, one that is more under-

standable in the American and British context, and its operation has been relatively thoroughly studied (Albrecht, 1980).¹¹

Because these European countries have substantial experience using fines in the vast majority of their criminal cases (upwards of 70% of the non-traffic cases in England and Germany), we reviewed the legal and research literature on their practices and the sentencing philosophy behind them. In addition, with support from the German Marshall Fund of the United States, the Vera Institute's London Office conducted a preliminary statistical analysis of fine enforcement practices in two English magistrates' courts. As with the data collected on New York City, the English data provide a picture of how two rather different lower courts approach the problem of offenders who do not pay their fines. We have included in Appendix C a fairly extensive discussion of our review of the European literature and our original research in England; these

¹¹ The "day fine" concept refers originally to a Swedish innovation that has attempted to reconcile the two potentially conflicting principles of consistency (or uniformity) and equity in sentencing by creating a two-stage decision process in setting the amount of a fine. First, the number of day fine units to which an offender will be sentenced is determined with regard to the seriousness of the offense but without regard to the means of the offender; thus crimes of equivalent gravity may be assigned the same number of units as the sentence. The monetary value of each of these units, however, is determined separately in the second stage of sentencing and is explicitly set in relation to what the offender can afford to pay given his or her financial means and responsibilities. Thus, the total penalty--the degree of punishment--should be in proportion to the gravity of the offense across different offenses but, within a given offense, it should cause an equivalent level of economy (short of severe hardship) across defendants of differing means.

materials will be drawn upon throughout this report as we discuss what we have learned about fining in American courts.¹²

D. The Findings in Brief

Like others who have had the opportunity to conduct multi-jurisdictional research on American criminal courts, we have been struck by the tremendous diversity of these courts and of the environments within which they operate (see Eisenstein and Jacob, 1977; Church, et al., 1978; Alfini, 1980; Ragona, et al., 1981). They vary enormously in terms of the size and composition of the populations they serve, the legal frameworks within which they operate, the types of cases and defendants they deal with, their operational procedures, the resources available to them, the skills and attitudes of their judges and other practitioners, and myriad other factors. Our data suggest that patterns of fine utilization also vary widely from court to court even within the same state or metropolitan area, as do practices with respect to collection and enforcement.

There are, however, some common themes that emerge from the various types of data we have gathered. Not all were expected. One clear finding is that the fine is used very widely as a criminal sanction in American courts (that is, as a sentence in cases other than the violation of routine traffic and ordinance laws). It is probably

¹² Because of the similarity between the English and American legal systems, because the English use coercive enforcement techniques that are of interest to American practitioners, and because their record-keeping systems permit collection of rather complete data on enforcement procedures (which American court records usually do not), the National Institute of Justice has funded a follow-up research project to explore the enforcement of fines in magistrates' courts in greater depth. The results of this study, carried out by the Vera Institute of Justice's London Office, are expected in mid-1983.

more widely used than any other type of sentence. Collaterally, we found that fining is big business for American courts; large amounts of money, probably well over a billion dollars annually, are collected by courts across the country.

Another theme is that fines are viewed differently and used differently in courts of limited jurisdiction, in "hybrid" courts that deal with both misdemeanors and felonies, and in general jurisdiction courts that handle only felony cases. Practitioners in the lower courts tend to hold appreciably more positive views of the fine as a sanction, and fines are used far more frequently in these courts. However, while limited jurisdiction courts are the heaviest users of fines, some courts that handle only felony cases make surprisingly extensive use of fines. Although our data are sketchy here, in certain courts fines appear to be used for some categories of offenses that can include quite serious criminal behavior.

A third common theme is the lack of relevant and reliable information on fine utilization and enforcement. Few practitioners or policymakers have sound working knowledge of their own jurisdictions' fine levels, the frequency of fine use (alone or in combination with other sanctions), collection rates, enforcement success, and so forth. Moreover, their administrative records are seldom maintained in such a way as to make this type of policy-relevant information readily accessible. However, despite the difficulty of obtaining valid and reliable data on fine utilization and enforcement, there is evidence that some courts not only use fines frequently for non-trivial offenses but are also relatively successful in collecting them. Others use fines much less frequently and seem to have substantial difficulty collecting them.

The wide diversity of practice revealed by our data persuades us that courts should begin to examine their own use and collection of fines. They may be surprised at what they find; we certainly were in New York City. It also persuades us that more detailed research on actual fine use and techniques of successful collection in a range of specific courts is likely to be fruitful. Together these efforts might well provide us with concrete information about how jurisdictions can improve their fining and collection practices and perhaps expand their use of fines (and other monetary and quasi-monetary sanctions) for some groups of offenders now jailed for want of other enforceable options.

E. Outline of the Report

In this report, we have attempted to weave together the general descriptive data we have assembled about patterns of fine use, collection, and enforcement with the more impressionistic information we have gathered about the specific fining practices of different courts. In doing so, we have organized the remainder of this document into six substantive chapters. Chapter II focuses on the use of fines in different types of courts; Chapter III on their collection of fines; and Chapter IV on their enforcement against defaulters. In Chapter V, we undertake a somewhat speculative discussion about the statutory, structural and attitudinal factors that appear to influence the extent of fine use in different courts. In Chapter VI, we look at some of the policy issues surrounding the use of fines and other sentences and offer some suggestions about directions for future policy-related research in this area. Finally, in Chapter VII, we offer a series of recommendations for practitioners and policymakers who are interested in moving toward the more effective use of fines as criminal sanctions.

As is inevitable in any effort to provide a readable overview of a great deal of information, some topics we touch upon in the report are not covered in as much depth or detail as they were in the original research. This is certainly true of the statutory and case law reviews, the study of the New York City courts, and the work on European fine use. To assure that all the materials collected in this exploratory study are available to interested individuals, the ten Working Papers we prepared during each stage of the research have been compiled into five volumes which will be made available upon request.¹³ It is our hope that this report of our exploratory efforts, in conjunction with the ten Working Papers, will stimulate further thinking about fine use and enforcement in the United States, and that these materials will help encourage innovative practice and policy-related research in this little examined area of sentencing.

¹³ These working documents encompass some 900 pages of material. The first volume contains Working Papers #1-#3, which report on our review of the American State Statutes, the Model Codes, and the Federal Statutory Law Relating to Fine Use (all by Joyce L. Sichel); it also contains Working Paper #4 on the Case Law and Constitutional Problems in Default on Fines and Costs (by Alice Dawson); and Working Paper #5, the Review of the United States Fine Literature (by Ida Zamist and Joyce L. Sichel). The second volume, authored by Barry Mahoney, Roger Hanson and Marlene Thornton, is Working Paper #6 on the Use of Fines as a Criminal Sanction in American State and Local Trial Courts: Findings from a Survey of Clerks and Court Administrators. The third volume is Working Paper #7, Ida Zamist's empirical study of the Use of Fines in the New York City Courts. The fourth volume contains Working Papers #8 and #9 which report on Visits to Selected State and Local Courts and on U.S. District Court Fine Imposition and Collection Practices, both by Joyce L. Sichel. The fifth and final volume is Working Paper #10, the report on Fines in Europe by Silvia S.G. Casale.

CHAPTER II

USE OF THE FINE AS A CRIMINAL SANCTION

A. The Purposes of a Fine Sentence

It is not difficult to find reasons for the attractiveness of fines for sentencers. ...[F]ines are unequivocally punitive, designed to deter, a significant attraction now that the treatment/rehabilitation ideal has fallen from grace. The meaning of fines is clear. Unlike community service, probation or even custody, it is doubtful whether sentencers, defendants, victims, and public at large disagree about what a fine represents.... (Morgan and Bowles, 1981: 203; emphasis in original.)

While this rather typical British perspective on the fine as a sanction is more unequivocal than almost any statement in the American fine literature, there appears little theoretical disagreement on either side of the Atlantic about the purposes served by a fine sentence.

Fines obviously do not incapacitate, and they are rarely thought to be rehabilitative.¹ But fines are often thought to be of deterrent value, either to the offender himself or to other would-be offenders, particularly when the fine is relatively large or when it is set to deprive offenders of profits from their crimes. Economic theorists, for example, who tend to conceptualize criminal behavior as a rational cost-benefit activity (e.g., Becker, 1968; Ehrlich, 1973), often look to

¹ Although sentencing theorists do occasionally view the fine as potentially rehabilitative by making offenders aware of their social obligations in paying out their fine (Miller, 1956; Best and Birzon, 1970), this perspective is more commonly found in conjunction with another monetary penalty, restitution, which has attracted considerable attention in recent American sentencing discussions (Forer, 1980).

finer to deter offenders from crimes of gain both by removing the profit from their illegal activity and by exacting an additional monetary penalty (see, Zimring and Hawkins, 1973). Fundamentally, however, fines are thought to be punitive, and questions about their use in both Western Europe and the United States tend to revolve around their appropriateness in relation to other punitive sanctions, particularly incarceration, and around related practical issues such as whether a fine can be set high enough relative to offenders' means to be sufficiently punitive.

Despite the decline of rehabilitative goals and the resurgence of retributive concerns (although these are not always explicitly acknowledged), fines have not been put forward as a major alternative to incarceration in the United States as they have in Western Europe, particularly in England, West Germany and Sweden. Instead, incapacitation seems to have sway, especially for more serious offenses, but also for persons repeatedly convicted of less serious crimes. For felony offenses, for example, statutes passed by the various states in recent years have generally attempted to mandate and lengthen prison terms but have not tended to increase fine ceilings or strengthen fine enforcement practices. And, whether impelled by concern for protecting the public or by retributive sentiments, legislators in some states have seen fit to actually proscribe a fine as the sole sentence for felony offenses (e.g., New Mexico, Ohio, Virginia and Colorado). When new monetary penalties have been written into the law, often for misdemeanors and lesser felonies as well as for more serious offenses, they are likely to be in addition to other penalties and in the form of restitution payments or special assessments to support victim compensation or police

services rather than fines (e.g., California, Connecticut, Florida, Indiana, New Jersey, Virginia and more recently, New York State; Table A-1, Appendix A).²

Generally speaking, model penal codes and sentencing standards in the United States have reflected the long-standing and widespread American perspective of discouraging rather than encouraging the use of fines.³ This position is also reflected in most recent attempts to reform and revise federal criminal laws. Beginning with the Brown Commission, which issued its final report in 1971, these efforts have tended to downplay the usefulness of fines except for minor offenses or

² While most states that have recently revised their statutes in these areas express a bias in favor of restitution, it is noteworthy that both Maine and Massachusetts have the opposite provisions--that restitution be considered secondary to fine sentences. In Maine's language: "Restitution for victims is ancillary to central objectives of criminal law. It shall be applied only when other purposes of sentencing can be appropriately served" (ME. REV. STAT. ANN. tit. 7A, §1321). And Massachusetts prohibits the imposition of restitution in lieu of a fine (MASS. ANN. LAWS ch. 276, §92A (Michie/Law, Co-op)).

³ The American Law Institute's Model Penal Code (1962) would have lawmakers authorize fines only where they seem likely to deter future crimes of gain. Fines are not to be used in addition to imprisonment or probation unless deterrence or correction of the offender will be especially served by the additional fine penalty (§7.02(2)). The court is to avoid fining those who would be prevented from making restitution if they had to pay a fine and to avoid fining those who would be unlikely to be able to pay a fine (§7.02(3)). Further, judges are not to impose fines as a sole penalty unless public protection is assured, because fines leave offenders at large (§7.02(1)).

Several of these caveats about fine imposition are repeated in later model codes. Fine sentences are not to be used where they may compromise public safety, says the National Council on Crime and Delinquency in its Model Sentencing Act (1977). The American Bar Association (ABA), sponsor of Standards Relating to Sentencing Alternatives and Procedures (1978), would require judges to believe that deterrence or correction could be accomplished through a fine before such a sentence was imposed (§3.7(c)). The ABA would also restrict fines for felony offenses to those cases where the defendant has gained money or property (§2.7(a)). But the ABA, as well as other model code drafters, strongly recommends restitution as a desirable sentencing option or adjunct.

major ones involving pecuniary gain.⁴ In strongly negative language, the Brown Commission stated:

Because fines do not have affirmative rehabilitative value and because the impact of the imposition of a fine is uncertain, e.g., it might hurt an offender's dependents more than the offender himself, fines are discouraged...unless some affirmative reason indicates that a fine is peculiarly appropriate (National Commission on Reform of Federal Criminal Laws, 1971: 296).

In striking contrast, legislators and other policymakers in Britain, Germany, and Sweden have taken quite the opposite stance: fines have been embraced as the sentence of choice, even for some quite serious offenses, while imprisonment (particularly for short terms) is regarded with the lack of enthusiasm that Americans have generally had

⁴ For example, in 1979, the Senate Committee on the Judiciary reported out S 1722, commenting "It is intended by the Committee that the increased fines permitted...will help materially to penalize and deter white collar crime" (96-533, p. 975), and that "high fines and weekends in jail could sometimes substitute for a long prison term" (p. 973). However, no U.S. code revision proposals have passed both houses of Congress to date.

for fines.⁵ Indeed, many of the concerns about fines expressed by the Brown Commission are voiced by Europeans in relation to sentences of imprisonment and, in this way, are used to justify and to encourage the imposition of fines.

Although comparisons across national boundaries are always tricky, it appears that the Federal Republic of Germany shows the most extensive use of fines for adult offenders sentenced for criminal offenses of a non-traffic variety. Approximately 75 percent of such offenders are sentenced to fines in that country. In England the equivalent proportion appears to be about 73 percent, and in Sweden it is about 69 percent. And these countries' use of the fine is not restricted to petty crimes. About two-thirds of all German offenders sentenced for crimes against the person are fined, as are about half of all such offenders in England and Sweden. Whatever the contrasts may be

⁵ For example, a recent English policy report on fine default begins as follows:

We start by stressing the considerable merits of the fine as one of the most valuable options available to courts. The fine is attractive to sentencers because it is flexible and is seen to combine elements of both reparation and deterrence. In terms of conviction rates it compares well with other sentences and is also economical, even when the costs of enforcement and imprisonment for default are taken into account. It is this general satisfaction with the fine which is its greatest strength. Such a situation is worth safe-guarding. It is therefore important that nothing is done which would undermine its position as the foremost sentence in British courts. Because of the undoubted merits of the fine we believe that, despite the current economic recession, there is scope for greater use of fines as an alternative to a custodial sentence. We support the view of the Justices' Clerks' Society that the fine has 'the most potential for growth as an alternative to a prison sentence.' (National Council for the Care and Resettlement of Offenders, 1981: 1.12-1.13).

for precisely the same criminal behavior, it is clear that in England, Germany, and Sweden, the fine is heavily used and that it is the sanction of choice for many types of criminal offenses, including some considered quite serious. As we indicated in the last chapter, it is also the primary alternative to short-term imprisonment as a penalty in all these criminal justice systems, most dramatically in Germany since 1969. According to Gillespie's data (1980:21), over 113,000 people were imprisoned for short terms in 1968 (i.e., less than six months); but by 1976, this number had dropped to under 11,000 per year.⁶

The explanation for the differences in policy perspective between these European countries and the United States is probably quite complex, but it does not appear to reflect alternative philosophies about the general purposes served by fine sentences: on both sides of the Atlantic, the fine is seen as punitive and possibly deterrent. However, while in Western European thinking, this philosophical perspective appears to hold regardless of the size of the fine, in American sentencing literature, it is primarily large fines that are regarded as punitive and as deterrent sentences. The issue of the sentencing purposes for which small fines are imposed has received less attention in this country. In addition, in these Western European countries, probation, with its central rehabilitative aims, is used less frequently and more selectively than in the United States. In part this may be due to a

⁶ Because of the general lack of information available to American audiences on fine use in Europe, we have included a fairly extensive discussion of the literature in this report (see Appendix C, "The European Experience: Fines as the Sentence of Choice"). This Appendix, and references in the text of this report to European literature or research, are drawn principally from Working Paper #10 (1981), prepared by Silvia S.G. Casale of Vera's London Office.

greater emphasis on intensive casework; the probation order in European systems may be a less perfunctory exercise in supervision and treatment than is at times the case in the United States.

The dominant use of the fine in Europe springs from the open and unabashed objective to punish the offender. Yet the fine is seen as the less punitive of the two major sentencing alternatives: the fine or the jail/prison term. This view may be the result of a lower level of commitment in Europe to the rehabilitative concept with respect to imprisonment. Concern about the ill effects of custody have been voiced since the 18th century, and the treatment model of imprisonment never won the following in Europe which it enjoyed for a time in the United States. Thus in Europe the aims of sentencing tend to be couched in guarded terms reflecting modest expectations. For these reasons, the fine is the preferred sentence by virtue of its less counter-productive effect on subsequent behavior. In England, for example, the resulting preference for fining is expressed by the notion that, at the very least, fines are likely to be less ineffective in terms of subsequent behavior by offenders who are fined than are other penalties (Harris, 1980:10),⁷ and that, at best, they may be penologically effective (Morgan and Bowles, 1981:204).⁸

⁷ The somewhat tentative tone of this proposition appears to result primarily from a disinclination to claim generalizable effects for any sanction, rather than from a lack of belief in the efficacy of fines.

⁸ The principal basis for this proposition is data showing that reconviction rates for fined offenders are lower than those for offenders sentenced to probation or short-term imprisonment (McKlintock, 1963:173; Davies, 1970; Softley, 1977:7-9). While such data are not thoroughly enlightening because one cannot be certain that the groups of offenders sentenced to different penalties are not substantially dissimilar in terms of their backgrounds, including previous convictions, demographic or socioeconomic status, these findings are used to support the policy position that the fine is no less ineffective than is incarceration for fined offenders.

These perspectives have not gone unnoticed in the United States, and those who have called for reexamination of the fine's potential have proceeded from an implicit premise that fines are used relatively infrequently in this country by comparison to England and other European countries (Carter and Cole, 1979; Gillespie, 1981; Ryan, 1983). Although opinions vary with respect to whether the fine should be used more widely as a criminal sanction in American courts, neither the proponents of wider use nor the skeptics have had a firm sense of the extent to which fines are in fact utilized for particular types of offenses or of the range of variation in usage among American courts that handle similar types of cases. The development of some base of knowledge in this area seems essential to serious consideration of proposals for broader (or more limited) use of fines. One objective of our study, therefore, particularly of the telephone survey, was to begin to fill in this gap in knowledge about fine use. Most of our discussion in the remainder of this chapter will focus on what we have learned about the frequency with which fines are used in different types of courts across the country, the types of offenses with which they are used, the forms fine sentences take, and their amounts.

B. Frequency of Fine Use

One of the dominant themes to emerge from the telephone survey of chief clerks and court administrators is that fines are used very widely as a criminal sanction in American courts, more so than we had anticipated prior to the start of the project. In limited jurisdiction courts, which handle well over 90 percent of the criminal cases brought before the courts in this country, fines appear to be the predominant

sanction, although we are not certain how frequently they are used alone, as contrasted with their use in combination with other penalties (see Section D below).⁹ Table II-1 summarizes the responses of court administrators to a telephone survey question asking in general terms about the extent of fine usage in their courts with defendants convicted on charges other than parking and routine traffic matters. It shows that 19 of the 74 respondents in limited jurisdiction courts (26%) replied that their courts use fines in all or virtually all such cases. An additional 38 respondents (51%) reported that their courts used fines in most of these cases. Only seven respondents (9%) indicated that their courts seldom use fines in these cases.¹⁰

⁹ In this report, the term "limited jurisdiction courts" refers to municipal courts and to county- and state-funded courts that handle ordinance violations and/or state misdemeanors. (See Appendix B for a list of courts surveyed by their classification.)

¹⁰ These seven were: Santa Fe Municipal Court, Santa Fe District Magistrate Court; Davidson County General Sessions Court (Nashville, Tenn.); San Francisco Municipal and County Court; Ramsey County Municipal Court (St. Paul, Minn.); City Court of Syracuse, N.Y., Criminal Division; City Court of Buffalo, New York; and Lakewood, Colorado, Municipal Court. The latter court, located in a relatively affluent suburb of Denver, apparently does not use fines in non-traffic matters possibly because it makes extensive use of a diversion program in these cases.

Table II-1

FREQUENCY OF FINE UTILIZATION FOR CASES OTHER THAN PARKING
AND ROUTINE TRAFFIC MATTERS, BY TYPE OF COURT

| Type of Court | Frequency of Use | | | | | Total |
|--|----------------------------------|---------------|---------------|--------|-------|-------|
| | All or Virtually All Cases | Most Cases | About Half | Seldom | Never | |
| Limited Jurisdiction | 19 | 38 | 10 | 7 | 0 | 74 |
| General Jurisdiction Fel., Misd., and Ord. Viol. | 1 | 15 | 7 | 5 | 0 | 28 |
| General Jurisdiction Fel. Only | 0 | 5 | 4 | 13 | 2 | 24 |
| TOTAL | 20 | 58 | 21 | 25 | 2 | 126 |

Source: Telephone survey.

The heavy fine usage reported by these respondents in cases other than parking and routine traffic matters is consistent with data found in the few other recent studies that have dealt, at least in part, with the sentencing process in misdemeanor courts.¹¹ In studying the lower court in New Haven, the business of which does not include traffic cases or ordinance violations, Feeley (1979) found that 45 percent of the sentences were fines; bail forfeitures (which are regarded, apparently, as the functional equivalent of a fine) accounted for an additional 17 percent, for a total of 61 percent. Ryan found that in the misdemeanor caseload of the Columbus, Ohio, Municipal Court (which does include some traffic cases, many of which are driving while intoxicated (DWI)), fines were imposed in 87 percent of the cases where defendants were convicted (1980:94-5). Ragona and his colleagues (1981:7-8) found that between 75 percent and 81 percent of the sentences imposed in the three municipal courts they studied (which included some traffic and especially DWI cases) involved a fine.¹²

While fines are used less frequently in the New York City Criminal Court than in some other misdemeanor courts, the fine is nevertheless the most commonly used sanction in that limited jurisdiction

¹¹ Not only has there been very little empirical work on the use of fines, there has been relatively little research on courts' processing and disposition of cases other than felonies. The three recent studies upon which we draw in this chapter, that do examine the sentencing of cases in misdemeanor courts are: Malcolm Feeley's study of the Court of Common Pleas in New Haven (1979); John Paul Ryan's study of the Franklin County, Ohio, Municipal Court (Columbus) (1980-81); and Anthony J. Ragona, Malcolm Rich and John Paul Ryan's comparative study of misdemeanor courts in Austin, Texas; Tacoma, Washington; and Mankato, Minnesota (1981).

¹² In addition, Gillespie (1982:9) found that 53 percent of all misdemeanor cases receiving court supervision dispositions in Peoria County, Illinois, were sentenced to a fine.

court (which handles relatively few traffic cases and no ordinance or parking violations). Our sample of 1,945 sentences imposed in cases that had been initiated by an arrest shows that, on a citywide basis, fines make up 31 percent of the sentences in these cases (see Table II-2). The frequency of use varies considerably from county to county within the City's Criminal Court, ranging from a low of 21 percent in New York County (Manhattan) to a high of 50 percent and 52 percent in Queens County and Richmond (Staten Island), respectively.¹³

At the other end of the spectrum of courts surveyed, most general jurisdiction courts that handle only felony cases appear to use fines much less extensively than do other types of courts. As indicated in Table II-1, respondents in fifteen of the 24 felony-only courts contacted in our telephone survey (63%) reported that their courts seldom or never use fines. The survey responses from these courts are also consistent with case record-based data both from our sample of convicted cases in New York City's general jurisdiction felony court, where fines are used in fewer than five percent of the sentences

¹³ In summons cases, however, approximately 85 percent of the sentences in Criminal Court are fines. Widespread use of summons in lieu of arrests was introduced in New York City in the 1950s. Of the over 340,000 summonses issued in 1980, about one-third were for traffic offenses (mainly driving an uninsured vehicle) and the remainder were for the violation of local ordinances and a few minor Penal Law violations, such as trespass, when someone has jumped the turnstile to avoid paying a subway fare (see Zamist, Working Paper #7, 1982:146ff).

Table II-2

SENTENCES IN NEW YORK CITY CRIMINAL COURT ARREST CASES, BY COUNTY

| Sentences | New York | | Bronx | | Kings | | Queens | | Richmond | | City Wide | |
|----------------------|------------|---------------|------------|---------------|------------|--------------|------------|--------------|-----------|---------------|-------------|--------------|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |
| Fine Only | 188 | 20.4% | 115 | 42.3% | 108 | 25.5% | 111 | 40.7% | 23 | 42.6% | 545 | 28.0% |
| Fine & Prob. | 1 | 0.1 | 3 | 1.1 | 1 | 0.2 | -- | -0- | -- | -0- | 5 | 0.3 |
| Fine & Cond. Disch. | 4 | 0.4 | 3 | 1.1 | 14 | 3.3 | 25 | 9.2 | 5 | 9.3 | 51 | 2.6 |
| (Subtotal--Fines) | (193) | (20.9) | (121) | (44.5) | (123) | (29.1) | (136) | (49.8) | (28) | (51.9) | (601) | (30.9) |
| Jail | 143 | 15.5 | 34 | 12.5 | 87 | 20.6 | 52 | 19.0 | 19 | 35.2 | 335 | 17.2 |
| Jail & Prob. | -- | -0- | 1 | 0.4 | 4 | 0.9 | -- | -0- | -- | -0- | 5 | 0.3 |
| Intermittent Impris. | 1 | 0.1 | 1 | 0.4 | -- | -0- | 2 | 0.7 | -- | -0- | 4 | 0.2 |
| Probation | 24 | 2.6 | 24 | 8.8 | 41 | 9.7 | 11 | 4.0 | -- | -0- | 100 | 5.1 |
| Time Served | 347 | 37.6 | 17 | 6.3 | 13 | 3.1 | 9 | 3.3 | -- | -0- | 386 | 19.8 |
| Cond. Discharge | 176 | 19.1 | 74 | 27.2 | 146 | 34.5 | 55 | 20.1 | 7 | 13.0 | 458 | 23.5 |
| Uncond. Discharge | 39 | 4.2 | -- | -0- | 9 | 2.1 | 8 | 2.9 | -- | -0- | 56 | 2.9 |
| TOTAL | 923 | 100.0% | 272 | 100.1% | 423 | 99.9% | 273 | 99.9% | 54 | 100.1% | 1945 | 99.9% |

Source: One-week sample of all sentenced cases, New York City courts.

imposed,¹⁴ and from Eisenstein and Jacob (1977:274) who report that fines represented fewer than five percent of the sanctions imposed on convicted felony defendants in the three cities they studied (Detroit, Baltimore, and Chicago). Similarly, Gillespie (1982:7) reports that fines do not appear to be heavily used in felony cases in many Illinois courts.

In contrast, Table II-1 also shows that five of our respondents from the 24 felony-only courts reported that fines are used in most cases in their courts. This suggests that there are exceptions to the general practice of rarely using fines in felony cases, and raises the possibility that there may be more room for expanded use of fines in at least some felony cases than is generally thought feasible. Gillespie (1982:11-12), for example, notes that in two Illinois counties 20 and 25 percent of the felony cases receiving either a conditional discharge or a court or probation supervision sentence were sentenced to a fine, most often in combination with probation. Clearly, it would be desirable to know more about the courts that use fines extensively for felony offenders--the kind of caseloads and defendant populations they have, when and how they use fine sentences, whether fines are used alone or in

¹⁴ According to aggregate data available from the New York State Office of Court Administration, only 198 of the 13,102 sentences imposed in the Supreme Court (New York City's general jurisdiction trial court) in 1980 were a fine alone (1.5%). These statistics, however, do not indicate the number or proportion of sentences in which fines were imposed in combination with another sentence, such as prison or probation. In examining the sentences imposed during a one week period in October 1979, we found that none of the 220 Supreme Court sentences were for a fine alone. Only four of them (1.8%) involved a fine in combination with another sanction, which was always probation.

combination with other penalties, what practices they follow with respect to collection, and so forth.¹⁵

Despite these exceptions, it would seem likely that the generally limited use of fines in felony courts has encouraged the prevailing belief that fines in American courts are almost exclusively restricted to routine traffic cases and relatively minor criminal offenses (e.g., Carter and Cole, 1979:155, 161; Gillespie, 1981:198-201). Yet, as we have seen, fines are used for a wider range of cases in limited jurisdiction courts, and Table II-1 also suggests this is the case for many "hybrid" general jurisdiction courts, that is, courts that handle state misdemeanors (and, in some places, ordinance violations) as well as felony cases. These courts have been grouped together in the second row of Table II-1 although they represent a fairly wide range of different types of courts. While only one of the 28 telephone survey respondents from these important "hybrid" courts (Pottawatomie County District Court, Shawnee, Oklahoma) indicated that virtually all its cases (other

¹⁵ Two of the felony courts contacted by our survey were in Georgia (Atlanta's Fulton County Superior Court and Marietta's Cobb County Superior Court). We made site visits to courts in Georgia and confirmed the telephone survey data with interviews and observations (but not with case record-based data which are not available in these courts); everyone agreed that Georgia courts routinely use fines in felony cases. In felony courts in Atlanta and the surrounding area, fines are commonly imposed in combination with probation (called "probated sentences" in Georgia) primarily as a means of enforcing the fine but also as a means of increasing the severity of a probation sentence; it is also sometimes imposed in combination with a prison sentence. Despite a very poor defendant population, all Georgia courts appear to use fines extensively and judicial, court, and probation personnel take the position that almost anyone can pay a fine. One Fulton County Superior Court judge said that he almost always imposes a fine (along with any nonincarcerative sentence), and indicated that a fine of \$250 per year of probation was the "going rate." As we will discuss in subsequent chapters, Georgia probation department personnel are responsible for collection and can use the threat of probation revocation to enforce payments.

than parking and minor traffic offenses) were disposed of using a fine, the majority (15, or 54%) indicated that most of their cases involved use of a fine. In contrast, five of these courts (18%) reported that they seldom used fines, suggesting considerable variation in fine use within this category of courts.¹⁶ As we shall show below, it is important to know far more than we could learn through the survey about the specific types of cases dealt with in these courts, and about whether fines are used in conjunction with other penalties or alone, in order to better understand their use of fines as criminal sanctions.

Analysis of the survey data suggests that fines may be more commonly used in southern states than in other regions of the country (Table II-3). This tendency appears particularly pronounced in general jurisdiction felony-only courts. Six of the eight respondents from these felony courts who reported their courts used fines in half or more

¹⁶ To provide some examples, "hybrid" general jurisdiction courts reporting that they seldom used fines in criminal cases included the Superior Court in Maricopa County, Phoenix, Arizona; the Fourth Judicial District Court in Minneapolis, Minnesota; and the Superior Court of Spokane County in Washington. Among those reporting fine use in most of their cases were the 10th Circuit Court in Birmingham, Alabama; the Fairfax County Circuit Court in Virginia, and the Kenosha County Circuit Court in Wisconsin.

Table II-3

FREQUENCY OF FINE UTILIZATION, BY REGION AND TYPE OF COURT

Source: Telephone survey.

of their cases were from the south. Whereas only two of the eight southern courts in this category said that they seldom used fines, eight of the nine western courts and five of the six northeastern/midwestern courts said that they seldom use fines.

There appears to be less regional variation at the limited jurisdiction court level, but the southern courts contacted in the survey still tended to report somewhat more frequent use of fines than did their counterparts in other regions. Respondents in 19 of the 23 southern limited jurisdiction courts (83%) reported using fines in most or virtually all cases, compared to 15 of 23 (65%) of the eastern/midwestern courts and 20 of 27 (68%) of the western courts.¹⁷

Overall, the survey and collateral data suggest that fine use for criminal offenses in the United States, while not of the magnitude of that reported for our Western European neighbors, is more widespread and extensive than has been generally believed. Unfortunately, direct comparisons with England, Germany and Sweden are extremely difficult. National data for the United States do not exist, and American courts

¹⁷ It should be noted that our site visits and interviews with people around the country supported the impression gained from the telephone survey that courts in the southern region of the country utilize fines (and possibly other monetary penalties, assessments and fees) somewhat more heavily than courts in other regions of the country; this does not mean, however, that other courts do not rely upon them.

are also comparatively more diverse in their structure and practice.¹⁸ Nevertheless, while there are clear differences in sentencing across the Atlantic, and significant ones (including the possibility that fines may be used as sole sentences more often in Europe than in America), our data suggest they may not be quite as extreme as some have thought (Gillespie, 1981; Carter and Cole, 1979).

For example, official data on the magistrates' courts of England and Wales (the courts that generally parallel our limited jurisdiction courts) indicate that 74 percent of the convictions in non-traffic cases resulted in fines in 1978 (Criminal Statistics, 1980: 120). The overwhelming majority (77%) of the 74 American limited jurisdiction courts surveyed by us in 1981 reported that they used fines in all, virtually all or most of their non-traffic cases. And we know from actual case

¹⁸ The only data reflecting "national" sentencing statistics for the United States are those for U.S. District Courts. Given the nature of these courts' jurisdiction, however, they cannot be considered the equivalent of the court systems of European countries for which national-level data are assembled. Moreover, the statistics for the federal courts published by the Administrative Office of the U.S. Courts (Annual Report of the Director of the Administrative Office of the U.S. Courts) seriously understate the number of fines imposed in U.S. District Courts because they subsume any combination sentence involving fines under either prison or probation categories in the statistics they publish for the public. However, a document prepared for internal use by the federal court system lists each sentence imposed in U.S. District Courts separately (Administrative Office of the U.S. Courts, United States District Court, Sentences Imposed Charts, Twelve Month Period Ended June 30, 1980). This report was obtained and used by our research staff to tabulate the actual incidence of fines imposed (alone and in combination).

Almost one third (30%) of all sentences imposed in U.S. District Courts during the year 1979-80 involved a fine, either as the sole sentence or in combination with probation, and occasionally with prison. Fine-only sentences were 14 percent of the total sentences; and another 12 percent were fines levied in combination with probation. (It is noteworthy that a probation-only sentence is not a legal federal sentence; U.S. Code, Title 18 §3651.) In five percent of the sentences, a fine was combined with a prison sentence which also may include probation.

records that the proportion of offenders sentenced to a fine in a 1979 sample of the five courts that comprise New York City's limited jurisdiction court were 21, 29, 45, 50 and 52 percent (for a combined total of 31% for the City's Criminal Court). In addition, official British statistics indicate that 14 percent of the indictable cases sentenced in the Crown Courts of England and Wales (cases more or less equivalent to those handled by American general jurisdiction felony-only courts) were sentenced to a fine. While our American data also suggest that fines are used less frequently in upper level courts, nine of the 24 felony-only courts we surveyed (38%) reported that they used fines in half or more of their cases; only two indicated that they never used them. In New York City, where a large portion of the upper court cases involve crimes of violence, statistical data indicate that about five percent of the sentences handed out in the Supreme Court (for indicted felony cases) are fines.

C. Types of Offenses for which Fines are Used

Some sense of the kinds of cases in which fines are imposed by different types of American courts can be obtained from Table II-4. The data reflect answers to an open-ended question asking telephone survey

Table II-4
TYPES OF OFFENSES FOR WHICH FINES ARE COMMONLY USED,
BY TYPE OF COURT

| Type of Offense | Frequency | | | Total (N=126) |
|---|--------------------------|---|----------------------------------|------------------|
| | Ltd. Juris. (N=74) | Gen. Jurisdiction Fel., Misd., & Ord. Violation (N=28) | Gen. Jur. Fel. Only (N=24) | |
| Driving While Intoxicated/DUI | 54 | 22 | 2 | 78 |
| Reckless Driving | 30 | 9 | 0 | 39 |
| Violation of Fish & Game Laws and Other Regulatory Ordinances | 24 | 3 | 0 | 27 |
| Disturbing the Peace/Breach of the Peace/Disorderly Conduct | 32 | 8 | 1* | 41 |
| Loitering/Soliciting Prostitution | 15 | 4 | 0 | 19 |
| Drinking in Public/Public Drunken- ness/Carrying an Open Container | 14 | 5 | 0 | 19 |
| Criminal Trespass | 10 | 2 | 1 | 13 |
| Vandalism/Criminal Mischief/ Malicious Mischief/Property Damage | 9 | 3 | 3 | 15 |
| Drug-Related Offenses (including sale and possession) | 23 | 10 | 11 | 44 |
| Weapons (illegal possession, carrying concealed weapon, etc.) | 6 | 2 | 1 | 9 |
| Shoplifting | 17 | 3 | 0 | 20 |
| Bad Checks | 14 | 2 | 0 | 16 |
| Other Theft | 19 | 9 | 8 | 36 |
| Forgery/Embezzlement | 2 | 3 | 2 | 7 |
| Fraud | 1 | 4 | 1 | 6 |
| Assault | 29 | 14 | 5 | 48 |
| Burglary/Breaking and Entering | 2 | 6 | 6 | 14 |
| Robbery | 0 | 1 | 3 | 4 |

* Superior Court, Cobb County - 1% of caseload includes misdemeanors.
Source: Telephone Survey.

respondents to indicate the types of offenses for which fines are commonly used in their courts.¹⁹ The first striking thing about the table is the wide range of offenses for which fines are reported to be commonly used in the 126 surveyed courts. Looking first at the total column, it is clear that relatively serious motor vehicle offenses (driving while intoxicated (DWI) and reckless driving), which may enter courts as either misdemeanors or felonies, are often dealt with by fines.²⁰ So also are the variety of behaviors that comprise disorderly conduct/breach of the peace offenses, drug-related offenses (sale and possession), some thefts, and assault. In each of these categories (except for DWI where almost two-thirds of the courts report using fines), almost a third of all the courts report that fines are commonly used. For other categories of offenses (including prostitution, criminal trespass, criminal or malicious mischief, shoplifting and bad checks), some courts surveyed use fines commonly, but most did not report doing so in this survey. This enormous variability among courts in their use of fines in similar offense categories is as interesting as the range of offenses for which fines are used across these courts.

¹⁹ It is important to note that these data are based upon responses to questions about common crimes as defined by criminal statutes, for example "burglary" or "assault." Because the actual behavior that results in a conviction for "assault" in one jurisdiction may not be the same as the behavior resulting in that conviction charge in another, we cannot be certain what behavior is being punished by a fine (or any other sanction) without further research.

²⁰ Despite its heavy reliance on fines for many, indeed, most types of offenses, Sweden relies upon short-term imprisonment for drinking driving offenses; in fact, in a given year, over a third of all persons received into Swedish prisons are there as a result of such convictions. England and Germany, however, are closer to the American practice with heavier (though not exclusive) reliance on disqualification from driving, fines and mandatory alcohol treatment. (For a discussion of comparative approaches to drinking driving, see Casale, 1980.)

While some of these differences undoubtedly reflect variation among jurisdictions in the type of criminal behavior that falls under similar statutory offense categories, some also reflect different sentencing practices. Certain courts fine offenders; others use alternative sanctions, including incarceration.²¹

Table II-4 also suggests interesting patterns of fine use by offense category within particular types of courts. For example, of the 23 felony-only courts, eleven respondents (46%) reported that conviction on drug-related charges commonly carries a fine. Other felony offenses mentioned with some frequency by these respondents as commonly punished by a fine included theft (33%), burglary/breaking and entering (25%), and assault (21%). Rather provocatively, respondents in three of these 23 felony-only courts volunteered that fines were commonly used for robbery offenses (Marietta, Georgia; Little Rock, Arkansas; and Orlando, Florida); it would be helpful to know what specific types of behavior are covered by this charge and why judges in these courts, but not in

²¹ There is some evidence in support of the idea that jail sentences may be a frequent alternative to a fine, but without much more detailed research comparing criminal behavior (and not just statutory offenses) across jurisdictions, sophisticated comparisons of sentencing choices are not possible. Some pioneering work in this area has been done by Ragona and his colleagues, who compared sentence choice across three misdemeanor courts (1981). They concluded from their data that "Where defendants visibly have sufficient resources to pay, they will be fined. Where defendants lack such resources they will be given probation, sent to jail for a (short) term, or (increasingly in recent years) sentenced to community service restitution..." (p.21). Gillespie (1982:13) also notes that in felony cases in two Illinois counties "unemployed offenders were more likely to receive a jail sentence than employed offenders." He too concludes that greater use of community service options for those unemployed who cannot pay fines might provide an alternative to jail. Finally, in our own sample of New York City's Criminal Court, we found that, for example, theft-related misdemeanor offenses were sentenced quite differently in the various counties. In Manhattan (New York County), 22% were fined while 40% were jailed. In the Bronx, 11% were fined and 36% jailed. In Brooklyn (Kings County), 6% were fined and 38% jailed. In Queens, 12% were fined and 63% jailed, and in Richmond (Staten Island), 12% were fined and 77% jailed. (See Table D-1 in Appendix D.)

most others surveyed, regard a fine as an appropriate sentence. It may be that, as in felony cases in Georgia, a fine is used as a sentence in combination with probation (or even jail). Judges in Georgia indicated that they imposed combined fine and probation sentences on drug sellers, bookmakers, pimps, gamblers, DWI offenders, thieves, and a variety of "racketeers;" it is possible that they, or judges in other jurisdictions, might include some robbers as well.

Table II-5 shows the distribution of all sentences in arrest cases in New York City's misdemeanor court. These data parallel the survey data in Table II-4 on limited jurisdiction courts around the country. Fines are used in New York City with some frequency for a wide variety of misdemeanors, including DWI and reckless driving (the majority of the few motor vehicle cases appearing in the New York City Criminal Court), gambling, disorderly conduct, loitering, possession and sale of controlled substances, prostitution, lesser degrees of assault and theft, and criminal trespass.²² It is also notable that, at least in New York City, many of the misdemeanor cases that were fined were not

²² As Table II-5 indicates, approximately 40 percent of the Criminal Court sentences for disorderly conduct/loitering and for drug-related offenses involved fines, as did about two-thirds of the gambling convictions and a quarter of the assault convictions. There is, however, considerable variability from county to county (see Table D-1 in Appendix D). For example, only 14 percent of the prostitution convictions in New York County (Manhattan) resulted in a fine, compared to 36 percent in Kings County (Brooklyn) and 87 percent in the Bronx. The use of fines in assault cases ranged from less than 10 percent (1 of 12 cases in Kings County) to 60 percent (3 of 5 cases in Queens County). Whereas all the gambling convictions in the other counties resulted in fines, only about half the gambling offenders in New York County were fined. This diversity probably reflects, *inter alia*, differences in the nature and seriousness of the behavior within the same offense category, the socio-economic status of the defendants, and the political environments of the counties.

Table II-5

SENTENCES IN NEW YORK CITY CRIMINAL COURT, BY CONVICTION TYPE
CITYWIDE SAMPLE

| CONVICTION CHARGE TYPE | FINE ONLY | | FINE AND C.D., PROB. | | JAIL | | PROBATION | | TIME SERVED | | COND. DISCHARGE | | UNCOND. DISCHARGE | | TOTAL | |
|---------------------------|-----------|------|-------------------------|-----|------|-------|-----------|------|----------------|------|--------------------|------|----------------------|-----|-------|--------|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |
| Gambling | 55 | 65.5 | - | -0- | 16 | 19.0% | - | -0- | 5 | 6.0 | 8 | 9.5 | - | -0- | 84 | 100.0% |
| Motor Vehicle | 80 | 63.0 | 12 | 9.4 | 1 | 0.8 | - | -0- | - | -0- | 32 | 25.2 | 2 | 1.6 | 127 | 100.0% |
| Dis.Con., Loitering | 179 | 35.4 | 21 | 4.2 | 19 | 3.8 | - | -0- | 60 | 11.9 | 197 | 30.0 | 29 | 5.7 | 505 | 100.0% |
| Drugs | 50 | 34.0 | 8 | 5.4 | 20 | 13.6 | 8 | 5.4 | 20 | 13.6 | 35 | 23.8 | 6 | 4.1 | 147 | 99.9% |
| Prostitution-related | 64 | 19.9 | - | -0- | 17 | 5.3 | - | -0- | 235 | 73.3 | 5 | 1.6 | - | -0- | 321 | 100.0% |
| Assault | 10 | 19.2 | 4 | 7.7 | 15 | 28.8 | 10 | 19.2 | 3 | 5.8 | 10 | 19.2 | - | -0- | 52 | 99.9% |
| Theft-related | 61 | 15.1 | 2 | 0.5 | 177 | 43.9 | 46 | 11.4 | 25 | 6.2 | 88 | 21.8 | 4 | 1.0 | 403 | 99.9% |
| Trespass | 22 | 12.9 | 2 | 1.2 | 47 | 27.6 | 14 | 8.2 | 22 | 12.9 | 52 | 30.6 | 11 | 6.5 | 170 | 99.9% |
| Other | 24 | 17.9 | 7 | 5.2 | 31 | 23.1 | 22 | 16.4 | 16 | 11.9 | 30 | 22.4 | 4 | 3.0 | 134 | 99.9% |
| TOTAL | 545 | 28.0 | 56 | 2.9 | 343 | 17.7 | 100 | 5.1 | 386 | 19.9 | 457 | 23.5 | 56 | 2.9 | 1943* | 100.0% |

* Two cases were missing charge type.
Source: One-week sample of all sentenced cases, New York City Criminal Court.

trivial, nor were most of the fined offenders youths or first offenders. Forty-seven percent of the misdemeanor convictions that resulted in a fine in Bronx County had initially entered the court on a felony charge (after screening by the District Attorney's Office), as had 51 percent of the misdemeanor convictions in Kings County and 13 percent in New York County (Zamist, Working Paper #7, 1981:80). Furthermore, over 80 percent of the fined offenders in the sample were 20 years or older (p.100), and relatively few were first offenders: this was a first arrest for fewer than one out of five of the sample of sentenced offenders (p.92).

Neither the data on New York City nor the survey data on courts around the country indicate that the use of fines for white collar crimes is widespread in state and local courts. This probably reflects the fact that these crimes constitute only a small proportion of their caseloads. The picture in the federal courts is somewhat different, however, reflecting the fact that the proportion of the felony caseload involving white collar offenses is appreciably higher in federal district courts than in state courts. As indicated above (footnote 18), of the 28,598 sentences imposed in U.S. District Courts in the year ending June 30, 1980, 30 percent (8,705) involved a fine. While many of these sentences were for relatively petty offenses, it appears that fines were also used, often in combination with probation and occasionally with prison, for a wide variety of relatively serious offenses, many of a white collar/economic nature. According to judges and probation officers interviewed in the U.S. District Courts we visited, the more serious cases in which fines are commonly used include narcotics

offenses, vandalism of federal property, extortion, bribery and other forms of corruption, various types of frauds (e.g., mail, land, securities, food stamps), and embezzlement.

However, the federal judges interviewed report that they are often reluctant to impose a large fine as a sole penalty in a more serious white collar crime, imposing it instead in combination with a prison term or probation. Especially for serious offenses, they believe that fines have insufficient general deterrent value. One judge in New York's Southern District told researchers he is concerned about potential financial manipulators reading in the Wall Street Journal about a colleague "let off" with a fine. This theme, a fine used in combination with other penalties in contrast to a fine as a sole penalty, has arisen at several points in this discussion of fine use, and we now turn to a fuller discussion of it.

D. Forms of Fine Sentences: The Fine Alone and the Fine in Combination with Other Sanctions

One of the important ways in which fine use appears to vary across courts is in the extent to which fines are imposed in combination with other sanctions. The use of a fine together with another sanction (or set of sanctions) obviously affects the severity of the overall penalty, and may also have a bearing on the effectiveness of fine collection and enforcement. In England and Germany, fines in combination with other sanctions are quite rare, but in Sweden, while it is by no means the rule, combining fines with other penalties has been a more frequent practice in recent years (Casale, Working Paper #10, 1981:8). In our telephone contacts with American courts and in our site visits, we encountered examples of a wide range of practices; however,

because data are not readily available in most courts concerning the frequency of these practices, we were not able to compile systematic information about their distribution across the American jurisdictions we studied. While this will have to remain a matter for attention in future research on fines, we think it important to illustrate the variety of ways in which fines are used and point to places where it appears that different forms are in relatively common use.

Fine plus jail or prison

In this type of sentence, the fine tends to be an added punishment, often used to deprive an offender of illegal gains. This combination appears to be fairly common in cases involving white collar crime, fraud, corruption and so forth, and also large-scale sale of narcotics. Therefore, as indicated above, it appears to be most prevalent in the federal courts, although state court dealing with these types of offenses probably also use this sentencing form.²³

Fine plus probation

This combination, commonly used in some southern states and in federal courts, may be found in cases involving relatively large fines, but this is not always so. The probation department acts primarily as the fine collection agent, and periodic meetings of the offender and the probation officer provide a means of monitoring payments. (In Atlanta even the traffic court has a probation staff attached to it.) Payment of

²³ Alternatively some jurisdictions use "shock incarceration" (short term sentences) in conjunction with a fine as a method of stiffening the general reliance on fines without overburdening the jail system. (We heard some discussion of this in Georgia.) More frequently, however, short jail sentences, to humiliate and deter operators of illegal businesses, are combined with a fine which is viewed as "an expensive license fee" (Sichel, Working Paper, #8, 1981:9).

the fine is often made a condition of probation, and non-payment can become grounds for revoking probation. In Georgia, where this combination is the sentence of choice in a wide variety of misdemeanor and felony cases, probation officers report that revocation is fairly common, but rarely with nonpayment of the fine as its only cause. In Illinois, at least in two counties studied by Gillespie (1982), this combination also appears with some frequency in felony cases.

Fine plus suspended jail or prison term

In this situation also, the fine is usually the principal sanction. The length of the jail or prison term may indicate the seriousness with which the judge views the offense; suspension of it, usually on condition that the fine is paid by a certain date, provides an incentive for timely payment of the fine.

Fine or jail alternative

This is the traditional "\$30 or 30 days" sentence. In some jurisdictions, a dollar-to-days ratio is established by statute; elsewhere it is up to the judge to establish the alternative, sometimes within statutory limits (as in New York State). While in some sense then, the "choice" of penalty is left to the defendant, this type of sentence is usually meant to be a fine and the jail "alternative" is viewed as an enforcement device to be employed by the court only if necessary.²⁴ This is certainly true in New York City's lower courts where fines are viewed by judges as punishment and an individual

²⁴ In contrast, in England this type of fining occurs mainly for trivial offenses involving "socially inadequate offenders" (e.g., repeat public inebriates) when there is no real expectation of payment; thus this fine is a disguised prison sentence. However, because the offenses are very minor and the sums imposed are small, the time served is generally very slight, usually less than twenty-four hours.

deterrent for those who do not need to be removed from society (Zamist, Working Paper #7, 1981:14).²⁵

Fine alone, partially suspended

Like the suspended jail sentence, the partially suspended fine appears to be aimed mainly at encouraging prompt payment of the net fine amount. In some places, however, as Ryan suggests, this practice may also be designed to enhance a judge's popularity: "...as a skeptical Judge G. remarked... 'a heavy fine makes the police happy...suspending part of it makes the defense happy'" (1980:94).²⁶

Fine alone

Although some courts use fines in combination, others do not. The "stand-alone" fine appears to be the most frequently employed type of sanction in a great many limited jurisdiction courts. In Peoria County, Illinois, 53 percent of the misdemeanor cases receiving court supervision sentences received a fine alone, whereas only two percent received a fine in combination with another penalty (Gillespie, 1982:9). In New York City's Criminal Court, fines are also rarely

²⁵ The jail alternative set at the time a fine is imposed is intended to elicit compliance. In New York City, the number of days tends to increase as the dollar amount increases. Twenty-five dollar fines are accompanied by threats of up to five days, while fines exceeding \$500 carry alternatives of 30 to 90 days. Nevertheless, as Table D-2 in Appendix D shows, there is great disparity in the number of days for each dollar range; this probably reflects the varying number of days judges believe is the appropriate level of threat necessary to encourage individual offenders to pay. Because offenders differ in this regard, it would seem appropriate to find this type of disparity.

²⁶ We have also encountered fines that have been fully suspended (e.g., Arizona) because judges believe the offender has been sufficiently punished by the costs of posting bond, serving time in pretrial detention, or a losing income from lost work time. The suspended fine has also been suggested as a response to the problem of fining poor offenders and will be discussed further in Chapter IV.

combined with other sanctions (see Table II-2) and the same appears to be true in New Haven (Feeley, 1979: 137-139). Neither of the latter two lower courts, however, handle many serious traffic cases (e.g., DWI). It appears that in misdemeanor courts that do sentence DWI offenses with some frequency, the fine in combination sentence may be more prevalent. For example, as noted earlier, Ragona and his colleagues studied three misdemeanor courts that use fines extensively (1981). In Austin, fine combination sentences accounted for 71 percent of all sentences; they were primarily DWI cases. Of the remaining cases, seven percent were fine-alone sentences; these were virtually never DWI cases. In the two other courts studied (Tacoma and Mankato), fines were used alone in 71 and 68 percent of the cases (mostly criminal, rarely traffic), and in combination in less than 10 percent of the cases (mostly DWI). Ryan's data from Columbus, Ohio, also suggests that fines in combination are often found with serious traffic cases, especially DWI. In half of all these cases, defendants received sentences that involve some combination of fines, incarceration, suspension of the driver's license, and attendance at special programs for drivers who drink; however, in criminal cases, only one defendant in five was sentenced to a fine combined with a jail term (1980:99).

Practices with respect to the use of fines alone and in combination with other sentences are also influenced by statutory limitations and by judges' objectives in imposing sentences. In some jurisdictions, for example, certain types of offenses are punishable only by fine (e.g., many ordinance and traffic violations), while other offenses may not be punishable by fine at all (e.g., certain felonies or in repeat

felony offender cases). Additionally, the more judges are aware of (and concerned about) collection and enforcement, the more likely they may be to impose a fine in combination with another sanction in a fashion designed to encourage payment. We will look at this issue more closely in our chapter on enforcement.

E. Fine Amounts

Most state penal codes establish dollar ceilings on fine amounts for particular offenses or classes of offenses defined by their severity; minimum fines, however, are rarely established. The maxima vary dramatically around the country.²⁷ For example, Arizona, the state authorizing the highest fines, provides a \$1,000 fine maximum for disorderly conduct, a \$150,000 fine maximum for auto theft, a \$172,500 fine maximum for sale or possession of a narcotic drug by an individual, and a million dollar fine ceiling for a felony committed by a corporation.

By contrast, Vermont has fine maxima of \$500 for disorderly conduct, \$500 for auto theft, and \$1,000 for possession of a large amount of narcotic drug, and no special provisions for corporate defendants. While these differences may reflect the differing wealth of states' residents and businesses, it is probably more pertinent that Arizona has recently revised its criminal statutes, providing for higher fines more in keeping with the inflated cost of current living. However, it is noteworthy that even Vermont sets the highest fine ceilings for narcotics

²⁷ For an illustration of the interstate variability in fines permitted for a given crime, see Table A-2 in Appendix A where we show the maximum fine authorized by each state for a hypothetical nonviolent felony offense--the embezzlement of \$6,000 by an individual employee of a manufacturing firm. Embezzlement is clearly a crime of gain (assuming the sum is not recovered) for which many state statutes explicitly or implicitly encourage the use of large fine penalties. Yet six states do not authorize a fine for the offense at all, and four provide only a modest fine of under \$1,000 (presumably to be imposed in conjunction with imprisonment).

offenses. Crimes about which the public has become alarmed often have the highest authorized fines because punitive laws relating to them have been added in recent years. For example, a defendant in Rhode Island may be fined \$30,000 for a drug offense but only \$2,000 for burglary; and in Florida, where fine ceilings tend to be low, felonies resulting in injury or death may be punished by fines up to \$10,000.

Statutory fine ceilings tend to escalate along with perceived seriousness of the offense, although this is by no means a perfect correlation (see Sichel, Working Paper #1, 1981: Appendix). It seems clear that latitude to impose high fines is intended to foster both the retributive and deterrence aims of sentencing. These aims become clearest in the "gain" provisions in many state statutes which allow fines to be set in multiples of the amount of profit gained from a property crime. Such laws are thought to alert offenders that this type of crime is viewed seriously, and it is hoped they will discourage offenders from continuing to engage in it. If an offender can be made both to forfeit his gain and to pay an additional penalty, it is reasoned that he will rationally avoid such criminal activities in the future.

Delaware and North Carolina are exceptional in that their statutes explicitly leave the amount of the fine for many offenses entirely to the discretion of the sentencing judges; in practice, however, this is what happens in most courts around the country. States generally give judges the legal latitude to set the amount of fines anywhere at or below the statutory maximum. Because, as far as we can

tell, most fines are set well below the maximum, judges in fact have wide discretion in setting fine amounts.²⁸

Gillespie (1982) notes that in Peoria County, Illinois, 85 percent of the misdemeanor fine sentences were under \$150. Malcolm Feeley (1979) also calls attention to the low fines, as well as to the few jail sentences, imposed on convicted defendants in New Haven's Court of Common Pleas as examples of how judges in misdemeanor courts tend to be lenient in sentencing. Fines in New Haven rarely exceeded \$25. Even assuming that inflation may have doubled these amounts since Feeley's data were collected in 1974, fines are clearly quite low in New Haven, well below statutory maxima. While jailing seems more frequent in New York (compare Table II-2 with Feeley, p.138), fines in New York City's Criminal Court are also low. As may be seen in Table II-6, the most

²⁸ Although some critics of fine use have suggested that fines cannot be used for more serious crimes because statutory maxima are too low, we have not found much evidence that this is the case in state courts. (We note, for example, a recent New York Times article reporting that a woman who was one of the principals in a multimillion-dollar marijuana-sales operation was fined \$1 million by a New York judge in the Nassau County Court (4/20/82).)

To whatever extent the problem of fine ceilings being too low exists, it is probably most evident in the federal system where, as we have indicated, fines tend to be used in more serious crimes of an economic nature. In keeping with the Brown Commission's interest in using fines against major white collar criminals (1971), recent bills to reform the federal criminal code have proposed higher fine ceilings and fines based on illegal gains. For example, the report of the Senate Committee on the Judiciary which accompanied Senate bill 1437 in 1978 urged that fine ceilings be elevated to the prescribed levels so that they would not "be written off as a cost of doing business" (95-605, p. 891). This report also took the position that because legal fine ceilings have been so low, "fines generally have been an inappropriately under-used penalty in American criminal law" (p.911). The report also noted that many complaints had been received from federal judges about current fine levels which judges feel "are insufficient to accomplish the purposes of sentencing" [especially for corporate defendants] (p. 972). And even for less wealthy defendants, the report points out: "Clearly, if the defendant can earn the fine and pay it over a period of time, there seems little justification for choosing imprisonment" (p.976). However, no U.S. code revisions have yet passed both houses of Congress.

Table II-6

MODAL FINE AMOUNTS IMPOSED IN NEW YORK CITY CRIMINAL COURT,*
BY CONVICTION CHARGE TYPE, AND BY COUNTY

| Conviction Charge type | New York | Bronx | Kings | Queens | Richmond | Citywide |
|---------------------------|----------|----------|----------|--------|----------|----------|
| Gambling | \$50 | \$500 | \$100 | b | a | \$100 |
| Motor Vehicle | 25 | 25 | 50 | 50 | 100 | 50 |
| Dis. Con., Loitering | 50 | 25 | 50 | 100 | 100 | 50 |
| Drugs | 50 | 150to250 | 150to500 | 500 | b | 50 |
| Prostitution-related | 150 | 25 | 50 | b | b | 25 |
| Assault | 50to100 | 100 | a | a | b | 100 |
| Theft-related | 100 | 50 | 25&100 | 100 | a | 100 |
| Trespass | a | 25&100 | 50 | a | a | 100 |
| Other | 50 | 50&100 | a | a | b | 100 |
| All cases | \$50 | \$25 | \$50 | \$100 | \$100 | \$50 |

Source: One-week sample of all sentenced cases, New York City Criminal Courts
"Modal fine amounts" mean the dollar category that was the most frequent sentence.

* In the New York City Supreme Court Sample, there were four fine sentences (1.8% of the sample): \$500, \$500, \$500 and \$5000, each with 5 years probation.

a There were too few cases to identify typical amount.
b There were no fines for these charges.

frequent fine sentence across all types of cases in our sample was \$50. Half the fines were below \$75 (the median), and only 20 percent of the cases involved fines greater than \$106 (the mean fine amount). Nevertheless, as the table also shows, the "going rate" for fines in particular conviction charge categories varied considerably from court to court within the city. For example, the most frequent (or modal) fine amount for a disorderly conduct or loitering conviction was \$25 in the Bronx but \$100 in Queens. The fine for a drug-related misdemeanor conviction was likely to be \$50 in Manhattan but \$500 in Queens. These differences probably reflect several factors the influence of which cannot be measured by these data. These certainly include differences among counties in the type of criminal behavior classified within the same charge categories; differences in community and/or judicial attitudes toward the relative seriousness of particular illegal behavior; and differences in the economic circumstances of the offenders sentenced. We will return to this last factor shortly.

Low fines are not universal in misdemeanor courts, however. In an article replying to Feeley's conclusion that "the process is the punishment" in lower courts, John Paul Ryan suggests that in Columbus, Ohio, in 1978, "the outcome is the punishment." He shows, for example, that not only are jail sentences more frequent, but that fines are higher in Columbus than in New Haven: 63 percent were for more than \$50; the mean net fine (after taking account of fine suspensions) was \$111, and the median and mode were both \$100 (1980: 34-96). It is interesting to note, however, that the heaviest fines were for DWI convictions (with a mean of \$128), a type of case not found in New Haven (and rarely found in New York City's Criminal Court). Still, there are also examples of

misdemeanor courts where fines for non-DWI cases, closer to the typical offense pictures in New York and New Haven, are quite heavy. As mentioned earlier, interviews in Georgia suggest that, despite the poverty of most defendants, many fines are above \$250, though well below the \$1,000 statutory maximum for misdemeanors. In Clayton County, court personnel, judges, and probation officials indicated that \$250 (the cost of one year's probation) was the minimum fine for a misdemeanor; in DeKalb County, fines listed on a computer printout were typically in the \$200 to \$400 range, and a Fulton County lower court judge referred to \$150 as a "low fine" (Sichel, Working Paper #8, 1981:13).

We suspect, therefore, that fine amounts vary widely in the lower courts around the country.²⁹ Unfortunately, data are not readily available from courts themselves. Despite their intimate involvement in fine collection, court clerks and administrators interviewed in our telephone survey could not provide information on typical fine amounts, and even when we visited courts (as we did in Georgia), our data come from

²⁹ We suspect also that fine amounts may vary not only in relation to statutory provisions concerning fine amounts but also in relationship to the extent to which other monetary levies are simultaneously imposed on convicted offenders; but again, there is no empirical data that we know of to address this question. The Courts of thirty-one states permit the imposition of court costs; cost-like surcharges on fines are authorized by eleven states; and "penalty assessments" may be levied on convicted offenders in seven states regardless of whether they have been fined or otherwise sentenced (see Sichel, Working Paper #1, 1981:17-20). In Arizona, for example, a fined offender is required to pay various surcharges: 10 percent of the fine for law enforcement training, 2 percent of the fine for prosecutor training, and 15 percent of the fine if the case involved driving under the influence or drug offenses. In addition, the offender may be required to pay restitution and to reimburse the court for a court-appointed attorney. These additional financial penalties may work against the use of high fine amounts; for example, if a \$300 penalty is desired, the actual fine amount imposed would be reduced by the amount of the surcharges (i.e., 27% less).

interviews and unsystematic inspection of calenders. Data on fine amounts is simply not routinely tabulated by courts.³⁰

F. Setting Fine Amounts

Given the discretion judges have and exercise under state statutes, how do they determine the amount at which to set a fine? At least in part, of course, judges set fines amounts to reflect the relative severity of offenses. It appears that fines are generally higher for felonies than for misdemeanors. (We know this is the case in the federal system and in New York City, though fines are little used in the City's Supreme Court, and our interviews and observations elsewhere suggest a similar pattern.) Our sample data for the New York City Criminal Court also show that the citywide median fine amount for convictions on Violations and Class B (lesser) Misdemeanors is \$50, whereas it is \$100 for Class A (more serious) Misdemeanors (see Table

³⁰ To obtain information on average fine amounts for the federal court system, we had to calculate it ourselves from an internal document separately listing each sentence imposed by each U.S. District Court for the year ending June 30, 1980 (Administrative Office of the U.S. Courts, 1981). As might be expected, average fines imposed as part of a combined sentencing package (with prison or probation) were somewhat higher than average fine-alone sentences, and both were considerably higher than typical fine amounts we encountered in any state court. The mean fine in combination was \$2,535 in 1979-80, and the mean fine-alone sentence was \$2,164. Of the fines given without prison or probation, many were for petty offenses (including traffic violations) committed on federal lands and parks; 2,994 of the 3,955 fine-alone sentences (76%) involved fines under \$200. The distribution was bi-modal, with modes at \$35 and \$3,500, with some fines in the hundreds of thousands of dollars imposed as the sole penalties for commercial and trade violations and frauds. In the Southern District of New York, the average fine-alone sentence was particularly high (\$11,155), reflecting the fact that this district is the center for major financial activity, including illegal

D-3, in Appendix D). However, our data also indicate that there is considerable variability in fine amounts within these broad categories and even within narrower ones. Clearly, disparity remains in the setting of fine amounts and it is apparently related--appropriately, many would argue--to defendants' differing financial means.

We have already seen indications that this is a double-edged sword. On the one hand, it appears that at least some poor defendants convicted of misdemeanors, typically thefts, are fined in lower amounts than are more affluent defendants convicted of misdemeanors, typically motor vehicle-related offenses and especially DWI; the data in both the Ragona (1981) and the Ryan (1980) studies suggest this. On the other hand, as Ragona et al. also note, in some jurisdictions, while most middle class offenders are fined, many of the offenders that judges perceive as less likely to be able to pay fines are jailed instead:

Finally, in each court there is a pattern of segregation of the economic sanction (fines) from other--seemingly both more and less severe--sanctions (jail and probation). It might initially seem startling to think that courts veer all the way from a jail term to a 'slap on the wrist' (probation) for cases where fines are somehow inappropriate. Yet the underlying rationale seems clear. Where defendants visibly have sufficient resources to pay, they will be fined. Where defendants lack such resources, they will be given probation, sent to jail for a (short) term, or (increasingly in recent years) sentenced to community service restitution....(1981:21)

Obviously, if judges feel a defendant cannot pay a fine, or cannot be made to pay a fine (either because enforcement mechanisms in the jurisdiction are inadequate or because judges perceive some constitutional problem), they will not impose a fine or will impose a very low fine,

one that may be inappropriate for the severity of the offense. The imposition of fines is thus inextricably tied to collection and enforcement issues, topics we will address in considerable detail in the next two chapters. And this linkage is particularly acute with offenders who are at both extremes of the income spectrum--the poor and the affluent.

But before turning to our discussions of collection and enforcement practices and to their implications for fine use, let us look at what we have learned about how sentencing judges in the United States attempt to assess offenders' means in relation to fines. We will then turn briefly to the phenomenon of "day-fines," a particular strategy being experimented with in Western Europe for setting fine amounts in relation to both offense severity and income.

Poverty, indigency, and the ability to pay fines

Most criminal court defendants are poor; many studies have described offender populations as hampered by unemployment, poor education and limited employment histories. Both common sense and law seem to dictate that such people be fined only with caution and, in fact, provisions in many states' statutes, based upon the American Law Institute's 1962 Model Penal Code, warn against fining those who are unlikely to be able to pay. "Indigency" has also come to be an important concern for American judges since Supreme Court cases of the early 1970s began to address equal protection issues involving fined offenders. However, although the legal community had hoped for a cogent, widely applicable standard for measuring "indigency" for the purposes of sentencing, no acceptable definition has yet evolved for formally determining who is unable to pay a fine. (This also means that

there are no clear guidelines for judges to identify those who qualify for the special treatment required by Supreme Court decisions when they are in default of a fine but are too poor to pay it.)³¹

Legal guidance has been very scanty, usually emphasizing the discretion of the judge in determining indigency. The Arizona Supreme Court in In Re Collins (108 Ariz. 310, 479 P. 2d 523, 525 (1972)) attempted to define indigency as "not necessarily wholly devoid of any means, just being incapable of paying the fine forthwith through force of circumstances;" but discretion is presumably to be exercised by the judge in determining who is "incapable." The U.S. District Court in Alabama recognized "the practical problems inevitably inherent" in the determination of indigency, but cautioned that if a locality "devises means to test indigency claims,...they must be fair and bear some reasonable relationship to attainment of the desired ends" (Tucker v. City of Montgomery Board of Commissioners, 410 F. Supp. 494, 510-511 (D.C. Ala. 1976)).

³¹ The principal case law is to be found in three U.S. Supreme Court cases: Williams v. Illinois (1970), Tate v. Short (1971) and Beardon v. Georgia (1983). These cases deal almost exclusively with the issue of the circumstances under which an offender who is indigent may be imprisoned for nonpayment of a fine, and we will discuss them in detail in subsequent chapters on fine collection and enforcement. However, it is apparent from our interviews that at least some judges around the country believe that these cases, particularly Tate, prohibit the fining of an indigent; this is not an accurate interpretation. It is also not accurate to say that these cases prohibit the imprisonment of an indigent for default on a fine. If they did, enforcement would be extremely difficult and judges would be unlikely ever to impose a fine upon an indigent offender because it would be unenforceable. These Supreme Court cases do limit the circumstances under which indigents may be imprisoned for default; but they do not prohibit it, and they certainly do not prohibit or make it impossible in practice to fine someone who is indigent.

Sometimes eligibility for public counsel is used as a standard for indigency applicable to sentencing. Yet in many jurisdictions there is no right to representation except at the felony level. And, even in jurisdictions that do provide defense counsel at public expense, there may be only casual eligibility tests, as the District of Columbia is said to have. Also, New York City and some other major cities provide lawyers free of charge to all defendants who do not have their own lawyers for purposes of first court appearance. Thus, many jurisdictions lack a cogent indigent defense standard. But even where a reasonable income-related standard is employed for eligibility for public counsel, it may still be an inappropriate standard for ability to pay a fine. Many people who couldn't afford private counsel could still afford a fine, especially in installments. Unless the defendant is represented by a private attorney known to provide cut-rate services, the cost of a fine is likely to be far less than the cost of a privately retained defense lawyer in most cases.³² In any event, eligibility for public counsel (or the granting of permission by a court for a defendant to proceed in forma pauperis, waiving court fees) have been ruled in two legal challenges only to be "nondispositive" factors in determination of indigency for the purpose of fine enforcement (State v. Williams, La., 288 So. 2d 319, 321 (1974); Simms v. United States, 276 A. 2d 434, 437 (D.C. App. 1971)).

³² As one judge in Arizona superior court remarked in relationship to the issue of the need for a public defender as an indicator of indigency, "the cost of having to pay a criminal defense lawyer \$1,000-\$5,000 upfront is a hardship to many people, including those not in poverty."

Receipt of public assistance is often used as an indicator of having money only to buy bare necessities, with no extra income from which a fine might be paid. Yet, many families that receive public assistance have other sources of financial support (sometimes from criminal and fraudulent activities) and some might be able to afford even substantial fines.³³ Debate has arisen in England, where fines are used extensively, as to whether welfare or unemployment payments should be attached to satisfy unpaid fines. To date, those advocating against attachment have prevailed with arguments that it would be both inhumane to deprive a family of necessities and foolish to transfer funds from one government account to another. However, the issue is still open in England and many offenders receiving such benefits are in fact being fined (presumably because it is less harmful and costly than imprisonment) although the funds are not legally attached.

The data on Western Europe, as well as our own findings on the rather widespread use of fines in American courts, suggest that the poor are being fined in many courts. Moreover, evidence we will present in the next two chapters suggests that many of these American and Western European offenders are paying their fines. It is apparent, therefore, that some degree of poverty does not preclude the payment of a fine. Thus, in practice, judges do not always find themselves trapped between the extremes of having to choose to jail a poor defendant for want of an enforceable alternative or to "let him walk" with a discharge, unpaid

³³ Research being conducted by the Vera Institute of Justice under the Research Agreements Program of the National Institute of Justice on the relationship between employment and crime suggests that few New York City defendants seem to support themselves from full-time steady legitimate employment, but that many derive support from government assistance, family assistance, and odd jobs.

fine or a "slap on the wrist" in the form of merely technical probation supervision.

Some poor people have income, however obtained, for comforts as well as necessities. Others have few comforts, but manage on small budgets. Still others are destitute, people who have no home and receive no social services. In fact, there are all degrees of poverty and all kinds of fines. Recognizing these realities, many judges tend to focus on a defendant's ability to pay a particular fine, rather than whether he is too poor to be fined at all (the latter being the typical approach voiced by those asking for an "indigency" standard). The ability-to-pay idea has been recognized and written into the statutes of many states. Thus, New Jersey's statutes provide that:

In determining the amount and method of payment of a fine, the court shall consider the financial resources of the defendant and the nature of the burden that its payment will impose (New Jersey Revised Statutes §2C-44-2).

This statutory directive is followed by judges who ask convicted defendants questions about the reality of their day-to-day living. For example, one judge in the Newark Municipal Court typically asks defendants such questions as: "Do you have a car? Do you buy gas? Do you smoke?"

In the absence of legal standards for "indigency," many judges appear to have evolved their own unwritten guidelines for determining reasonable fit between a particular fine sentence and a particular offender. Sometimes these criteria are highly personal, as with the Newark judge who used a "luxuries" test to decide which poor defendants he could fine. When we asked judges in various parts of the country how

they determined that a defendant would be likely to pay a fine, they tended to talk about a "feel" for the defendant's financial condition based on whether he was working, his age, his personal appearance, and his address of residence. Many judges with whom we spoke (and whom we observed in court) also asked the defendant what he could afford (sometimes directly and sometimes through the defense attorney) and then tailored the fine to that amount. And when court papers showed that a defendant failed to raise even a low bail, judges sometimes used this information as a basis for setting a low fine.

Especially if the offense was minor and the fine set was relatively small, judges appeared to be comfortable with these "soft data." When they were contemplating a high fine or restitution in a more major case, they seemed to rely more on presentence reports prepared by probation staffs. However, probation officers generally are not trained to do financial investigations and some have told us that they also rely heavily on defendants' self-reports of their financial conditions.

Other times judges appear to make sentencing judgments more or less across the board for defendants in their court, after developing a presumption about their typical defendants' degree of poverty and the fine amount most are likely to be able to pay. For instance, the presumption among many New York City judges seems to be that few defendants have money to pay fines and that almost no one will be able to pay a substantial fine. Therefore, they limit the amounts of most of the fines they impose in Criminal Court and seldom use fines at all in felony cases in which they want to impose higher amounts because of the seriousness of the offense. This seems to happen routinely, regardless of an individual defendant's actual ability to pay. In contrast, some

courts visited in Georgia use fines extensively in felony cases. They tend to assume that defendants, however poor, will be able to pay substantial fines and to make restitution payments as well, if given the duration of a probation sentence to pay and pressure from probation officers to do so. Only when default occurs do they seem to consider seriously the offender's actual ability to pay.

Perhaps the generalized assumptions about defendants' overall ability to pay in New York City and in Georgia are both dubious, and could be changed to more moderate expectations based on closer inquiry into actual means. Yet neither we nor anyone else, as far as we can tell, actually knows the extent to which fines create hardship. We suspect fines can create real deprivation and may do so--especially when they are combined with court costs, restitution and/or penalty assessments as some state statutes' across the country are now requiring. In practice, at least some of those involved in sentencing attempt to avoid this. As a United States Attorney responsible for the collection of federal fines in New York's Southern District told us, "we try not to kill the person," in extracting fines. A Washington, D.C. federal judge remembered the proverb about being unable to get blood from a stone and, using the same life blood imagery, the District Attorney of New York City's Staten Island said, "We don't try to squeeze the last drop of blood from a defendant."

These concerns are laudable, but they may also be somewhat exaggerated in so far as they assume poverty to be an all-or-nothing thing. In practice, based on our courtroom observations, utterly impoverished offenders seem rarely to be fined. While there are those who view the fining of any poor person as odious, we did not find this

viewpoint widespread. And in England, the birthplace of many of our legal and social traditions, the frequent "means enquiries" held in magistrates' courts rarely find that defaulting offenders can afford to pay nothing on their fines. It seems from our American site visits that most poor defendants are also not totally destitute, and that their ability to pay fines is a matter for empirical rather than moralistic inquiry, especially given the lack of humane sentencing alternatives to fining.

In the United States and Western Europe, except in Scandinavia, income tax returns are not available to the courts for financial information, and even U.S. federal courts must obtain subpoenas to look at a defendant's financial records. Furthermore, because so many criminal defendants, especially at the state and local levels, do not have steady full-time employment, it is hard for a judge to estimate the weekly resources of such a defendant and to gauge how large a fine he could afford to pay. It is unknown whether defendants typically underestimate or overestimate their means in response to a judge's questioning about their resources. They may underestimate in order to be fined less, or they may overestimate in fear of being jailed if the judge believes they have no money to pay a fine. A defense attorney who represents poor clients in Washington, D.C. told us that "fines are almost never appropriate for indigents." Nevertheless, he reported trying to get his clients to bring money to court on their sentencing date so that he could attempt to persuade the judge to fine the small amount in his client's pocket, rather than risk a harsher sentence, lest the judge respond that way to his client's poverty.

Day fine systems: reconciling consistency and equity

A problem which vexes American judges about imposing fine sentences is how to set fine amounts consistently with reference to offense severity without at the same time disregarding the principle of equity. Despite the dissimilarities between Western European countries and the United States in the extent of fine use and attitudes toward them, this is a serious concern on both sides of the Atlantic. Although all these countries have somewhat different social structures and welfare policies, all are characterized by an unequal distribution of wealth and by a population of criminal defendants heavily drawn from the bottom ranks of that distribution (George and Lawson, 1980; Townsend, 1979). It is reasoned by many that if fine amounts are related to the seriousness of the offense but, at the same time, kept low enough to ensure that most defendants have a reasonable chance of paying them, then more affluent offenders will be able to "buy" their way out of punishment and the poor will suffer proportionately greater deprivation in meeting their obligations. However, because the practical alternative to a fine is often jail, those who are disenchanted with short-term jail as a penalty or who are concerned about the inequity of its application, have sought methods of setting fine amounts that reconcile the sentencing principals of consistency and equity.

The day fine system is a Swedish innovation that attempts to do this by a two-stage process of setting fine amounts. The theoretical separation of the stages is identical. In the Swedish system, the German system modeled after it, and in the proposals for the use of day fines

being considered in England.³⁴ The first stage is the setting of the number of day-fine units to be imposed; this is to be determined with regard to the seriousness of the crime but without regard to the means of the offender. Subsequently, the monetary value of each day-fine unit imposed is to be set by what the offender can afford to pay, rather than by the seriousness of the offense. Thus, at least theoretically, the degree of punishment should be in proportion to the gravity of the offense, and equivalent across defendants of differing means.

Despite theoretical reconciliation, it is not clear that either the Swedish or the German system operates to ensure it always occurs in practice. (Once again, official data are not kept in ways that permit easy assessment of such issues.) There is, however, some evidence that the number of day-fine units actually imposed does tend to be in relation to the severity of offenses, and that the value of the units is correlated with offenders' incomes. Operationally, the day fine system appears to be working in Sweden and it was introduced smoothly into the German courts in 1975. In Germany, the new day fine system seems successful insofar as most practitioners have accepted it, the use of fines has continued to be high, and fine amounts have been increasing. The problem in Germany appears to be that the guidelines established to determine the number of day-fine units corresponding to a particular offense are overly broad. As a result, judges can tinker with the figures in such a way as to assign a number of day-fine units within the guidelines that is based not necessarily on the degree of gravity or

³⁴ See Appendix C for a fuller discussion of these day fine systems.

culpability alone, but on a calculation of what the resulting total fine would be given the value of the day-fine unit determined by the means of the defendant. This practice puts the cart before the horse and, insofar as it is widespread, reduces the day fine system to a post facto rationalization of a decision based on more traditional sentencing notions. For this reason, there has been discussion in Germany of reforming the system to further separate the two stages of the decision. It is proposed that officials assessing the appropriate number of day-fine units (for example, the judge) be a different individual from the person responsible for calculating the value of the day unit based on means (for example, fines office court staff, or probation personnel).³⁵

In the day fine system, the problem of assessing offenders' means has been dealt with generally by relying on offenders' self reports of their employment and financial circumstances. In Sweden, veracity is encouraged because police and courts have official access to peoples' income tax statements, but in Germany (as in England and the United States) this method of assuring accuracy is not available. As a practical matter, however, when the fine is relatively low (as is most frequently the case), German courts do not seem to feel the need for a stringent means test, and when the fine is very high, they can obtain some information from the banks.

³⁵ Such separation could also be in time rather than in the person making the decision, thus leaving the entire sentencing decision up to the judge but having it occur in two stages at different points in the process.

In both England and Germany, however, the problem of offenders who are receiving unemployment or welfare benefits remains, and no one seems to have found a fully satisfactory solution. Apparently in Germany, courts tend to apply a minimum fine on the assumption that even the poorest offender will be able to pay a nominal amount. But such "symbolic fines" are controversial, with skeptics viewing them as inadequate to punish and to deter crime. This issue of token fine amounts in the case of very poor offenders raises important policy concerns which we will look at further in Chapter IV.

Clearly, however, if a day fine system of setting fine amounts were to be adopted on a large scale in England (and it is being considered, see National Association for the Care and Resettlement of Offenders, 1981), or in the United States, the adjustments to the system now being proposed in Germany would probably have to be considered (i.e., setting narrow guidelines for the number of day-fine units by type of charge and circumstance, and separating the two stages of decision-making).³⁶ The possibility of verifying income would be worth exploring also, particularly for those convicted of more serious offenses and for those who are more affluent. Non-custodial alternatives to fines for those who are truly indigent might also be examined closely. We will return to this latter issue at the end of Chapter IV, when we discuss jail and non-jail alternatives to enforcing fines against the poor and the indigent.

³⁶ One of the recent but unpassed bills in the U.S. Congress (S1, 93rd Congress, 1973) called for a type of day fine system. To our knowledge, among state jurisdictions, only the statutes of Kansas provide for a type of day fine, although that law also provides for community service in lieu of cash payments (Kansas Statutes Annotated, §21, 4610).

CONTINUED

1 OF 4

CHAPTER III

THE COLLECTION OF FINES

The use of fines as criminal sanctions and their potential efficacy depends in large measure upon the ability of some appropriate authority (usually the court or the probation service, but sometimes the police, the sheriff's department or local tax officials, etc.) to collect the fine and ultimately to enforce it if the time fixed for payment passes without collection and the offender faces default. If the fine cannot be collected--if offenders can for practical purposes ignore the imposition of a fine--then its use as a penalty becomes at best an empty gesture. On the other hand, if fine collection is taken seriously, and if responses to default are effective, offenders must either pay their fines or suffer more serious consequences. Then the fine may have a real meaning as punishment, and perhaps as a deterrent as well. In addition, success in collection may have an impact on utilization. If judges believe fines are being collected, they may be more inclined to use them, and to consider more extensive use, than if they believe offenders ignore them with impunity.

In addition to affecting the efficacy and frequency of fine use, fine collection practices may have an important bearing on the success or failure of other sentencing alternatives that have an economic impact on defendants. For example, although the ultimate beneficiary of a restitution order or a "penalty assessment" may be different from a fine, the practical problems of collection and enforcement are similar to those involving fines. Indeed, the administrative mechanics are often exactly the same. A court or other government agency that does a

poor job of collecting and enforcing fines may not do a better job of collecting restitution payments or penalty assessments from the same types of defendants. Thus, improving our understanding of fine collection techniques and approaches should be helpful in assessing the use of all economic sanctions.

Once a fine has been imposed upon a convicted defendant, a process is set in motion that we have somewhat arbitrarily divided into a "collection" and an "enforcement" phase. However, whether viewed conceptually or empirically, these phases are not entirely distinct; indeed in practice they often overlap and intertwine. Typically, at the time of sentencing, payment terms are set by the court. The offender may then pay the fine within those terms; or after a process of renegotiating those terms; or after some form of persuasive action has been taken by the court to encourage payment but after the time fixed for it has expired; or after some more forceful or coercive action has been taken by the court to compel payment. The offender may also fail to pay at all or not pay fully and at some point in time be formally identified as in default. The dividing lines between these various stages of the overall process are not always clear. Where "collection" efforts (which imply less coercive strategies) leave off and "enforcement" efforts (which imply more coercion) begin tends to be a question of degree, and may be as much a matter of how much threat is perceived by the offender as it is of the intent.

Given this ambiguity, the present chapter focuses on courts' success at collecting fines and the various approaches they take to encourage relatively "voluntary" payments. In the next chapter, we will emphasize the more coercive approaches courts may draw upon when collec-

tion appears difficult or problematic, including the threat of imprisonment, actual imprisonment, and various alternatives to imprisonment when custody appears inappropriate or ineffective. The overlap between the discussions in these chapters is most evident in those sections that discuss how courts monitor payments and the various ways they signal offenders that the court is aware of their failure to fulfill the obligations of their sentences.¹

A. Amounts Involved

Fines are a big business for American courts; courts collect a substantial amount in annual revenue from the imposition of this sanction. Our telephone survey reached only a small fraction of the state and local trial courts in the United States, but the amount collected in these courts alone is very substantial. A total of about \$110,000,000 was reported to have been collected in a single year in the 106 survey courts where respondents knew (or could estimate) the amount collected. Table III-1 shows the total amounts reported to have been collected by survey courts, by type of court.

Thirty-eight of the forty municipal courts contacted in the course of the survey could tell us the total amount of fines collected in the court's last fiscal year. These courts, which have a total population of approximately 20,000,000 within their jurisdictional boundaries, reported fine collections totaling \$80,000,000 for the year. While not all Americans live in areas that have municipal courts, we estimate conservatively that there are at least 180 million who do.

¹ See Footnote 10 in Appendix C for a discussion of the distinction between collection and enforcement as seen from a British perspective.

If the \$4:1 person ratio of collections to population that exists in the municipal courts contacted in the survey were to hold for the rest of the country, the national total of fines collected in municipal courts alone would have been over \$720 million in 1980.²

² This projection of revenues in relation to population within a municipal court's boundaries may be quite conservative. We examined data on fine collection in the municipal courts of four small cities in the Denver metropolitan area which have a total combined population of 137,819, according to the 1980 census. Total fine collection in the four municipal courts in 1980 was \$856,124, a ratio of approximately 6:1 (Mahoney et al, 1981:5, 75).

Table III-1

FINE AMOUNTS REPORTED TO HAVE BEEN IMPOSED
AND COLLECTED, BY TYPE OF COURT

| Type of Court | Number of Courts | Number of Courts Who Reported Fine Amounts Imposed | Number of Courts Who Reported Fine Amounts Collected | Total Reported to Have Been Collected* |
|--|------------------------|--|--|--|
| Limited Jurisdiction | 74 | 9 | 67 | \$93,829,366 |
| General Jurisdiction Felonies, Misde- meanors and Ord- nance Violations | 28 | 4 | 24 | 14,094,170 |
| General Jurisdiction Felonies Only | 24 | 2 | 15 | 2,055,101 |
| TOTALS | 126 | 15 | 106 | \$109,978,637 |

* Includes total revenue collected in some courts.
Source: Telephone survey

In terms of total fine amounts collected, municipal courts are far ahead of other types of courts. The highest revenue reported by any of the courts contacted in the survey was \$15,000,000 collected by the Los Angeles Municipal Court. Revenue from the six survey courts reporting the highest collections--municipal courts in Los Angeles, Denver, Minneapolis, Sacramento, Columbus, Memphis, and Cleveland--totaled over \$48 million. However, the figures for some of these courts include court costs and fines from routine traffic and other ordinance violations matters, and perhaps from parking violations as well, in addition to criminal cases. New Jersey's municipal courts alone collected \$65 million in fines and bail forfeitures during fiscal year 1980, including traffic fines. In contrast, in New York City, where parking violations and some types of violations of regulatory laws are handled administratively, total fine collections resulting from arrest cases in the Criminal Court (and going into the City's treasury) were about \$5 million. However, collections by administrative agencies handling parking and other ordinance violations, which in other jurisdictions are usually dealt with by the courts, totaled well over \$100 million in the City.

As we have seen, fines are used extensively by limited jurisdiction courts other than municipal courts, and by general jurisdiction courts that handle misdemeanors and ordinance violations as well as felonies. While it is not possible to accurately estimate the amount of fines collected in these courts, it is probably not less than \$300 million annually. Aggregate fine collections from fines imposed in federal courts are of a lesser order of magnitude, but still amount to

over \$20 million annually. Because of the great diversity of jurisdictional patterns, it is very difficult to make even a rough estimate of the national total of fines on the basis of the survey data. It appears, however, that the annual total is well over a billion dollars, and may well exceed two billion, particularly if we include other monetary penalties also collected. For example, in two Arizona counties (Maricopa and Pima), the total amount of all financial sanctions collected by the Superior Courts in 1980 was three times greater than fines alone (\$748,746 in fines and over \$2.3 million for all monetary sanctions).

B. Collection Rates

To what extent are fines imposed but not collected? What is the gap between what should be collected, under optimum fine collection practices, and what is actually collected? This is obviously an important question for assessing policies involving the use of fines (and other economic sanctions). Interestingly, however, very few courts can provide the requisite information. Although courts maintain records on payments in individual cases, they seldom keep aggregate data on fines imposed and fines collected. Generally their record-keeping systems do not even permit this information to be readily compiled when requested. Indeed, only 15 of the 126 courts contacted in our telephone survey could tell us (or were willing to estimate) the total dollar amount of fines imposed in the court's most recent fiscal year.

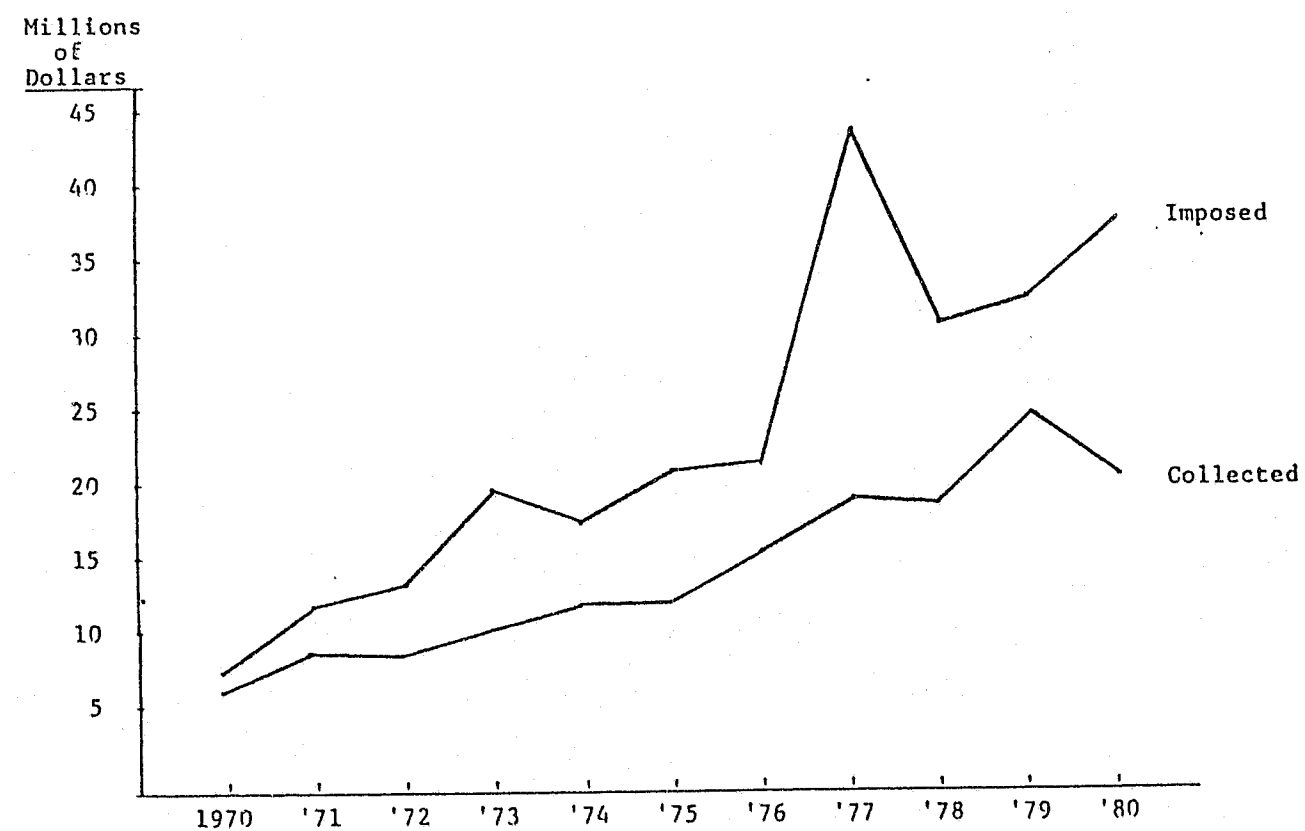
Even when figures on dollars of fines imposed as well as collected are available, as is true with respect to the federal courts, the figures do not pertain to the same fines. While we can sometimes learn how much was imposed and how much collected during a given fiscal

year, the resulting "collection rate" is only approximate because the fines collected in a given year have often been imposed in previous years when fining may have been more or less extensive than in the given year. Especially in the case of the federal system, where very high fines are often involved, the collection of one outstanding fine from a previous year may greatly inflate the collection rate for the present year.³ Nonetheless, the "collection rate" calculated in this way for federal criminal fines has varied between 43 percent and 80 percent during the 1970s (see Figure III-1).

To obtain reliable data on the extent to which fines imposed in criminal cases are actually collected in most jurisdictions, it appears necessary to analyze samples of arrest cases. In the New York City Criminal Court, we found that even with only minimal official collection efforts this major urban court system manages to collect three-quarters of the money it has imposed in fines within one year of sentencing. As seen in Table III-2, a citywide total of \$63,346 in fines was imposed on 601 sentenced criminal offenders during a sample week in 1979; a year later, \$47,042 of this amount had been collected. Table III-3 shows that of those fined, 111 (19%) paid in full on the date of sentence and another 289 (48%) paid in full within a year, for a total of 67 percent. It appears, therefore, that most of those fined pay and do so relatively promptly (within two months) as long as the court's attention to the matter is signaled by some device. In New York City's Criminal Court, this is done by calendaring the case when payments are due and by

³ As an example, in Richmond, New York City's smallest county (in terms of criminal case load), \$21,855 in fines was collected in 1980 and \$56,525 in 1979; in 1978, however, \$260,745 was collected! This latter figure probably includes the \$150,000 fine collected in a notorious case known locally as the "hot oil case" (Zamist, Working Paper #7, 1982:137).

Figure III-1
Annual Fines Imposed and Annual Amounts Collected
In Federal District Courts
(Fiscal Years 1970-1980)



Source: United States Attorney Financial Summaries, U.S. Department of Justice.

Table III-2

FINE AMOUNT IMPOSED AND COLLECTED WITHIN ONE YEAR
IN NEW YORK CITY CRIMINAL COURT, BY COUNTY
(N = 601)

| | New York | Bronx | Kings | Queens | Richmond | Citywide |
|----------------------------|----------|----------|----------|----------|----------|----------|
| Aggregate Amount Imposed | \$17,721 | \$12,005 | \$12,850 | \$16,673 | \$4,100 | \$63,346 |
| Aggregate Amount Collected | 10,396 | 9,560 | 9,901 | 13,831 | 3,350 | 47,042 |
| Collection Rate | 58.7% | 79.6% | 77.1% | 83.0% | 81.7% | 74.3% |

Source: One-week sample of all sentenced cases, New York city courts.

Table III-3

FINE COLLECTION IN NEW YORK CITY CRIMINAL COURT: PAYMENT
STATUS ONE YEAR AFTER SENTENCING, BY COUNTY

| Payment Status | New York | | Bronx | | Kings | | Queens | | Richmond | | Citywide | |
|---|------------------------|--------|------------------------|--------|------------------------|--------|------------------------|--------|-----------------------|--------|--------------------|--------------|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |
| <u>Paid in Full</u> | 114 | 59.1 | 73 | 60.3 | 85 | 69.1 | 104 | 76.5 | 21 | 75.0 | 400 | 66.6 |
| (on date of sentence) | (29) | (15.0) | (18) | (14.9) | (19) | (15.4) | (46) | (33.8) | (4) | (14.3) | (116) | (19.3) |
| (after date of sentence) | (85) | (44.0) | (55) | (45.5) | (66) | (53.7) | (58) | (42.6) | (17) | (60.7) | (284) | (47.3) |
| (without warrant issued) | (48) | (24.9) | (34) | (28.1) | (37) | (30.1) | (32) | (23.5) | (11) | (39.3) | (165) ^a | (27.5) |
| (with warrant issued) | (37) | (19.2) | (21) | (17.4) | (29) | (23.6) | (26) | (19.1) | (6) | (21.4) | (119) | (19.8) |
| <u>Resentenced to nonfine sentence</u> | b | | b | | b | | b | | b | | 17 | 2.8 |
| <u>Jail Alternative Imposed</u> | 33 | 17.1 | 14 | 11.6 | 12 | 9.8 | 8 | 5.9 | 3 | 10.7 | 70 | 11.6 |
| (without issuance of warrant) | (4) | (2.1) | (-) | (-) | (2) | (1.6) | (1) | (0.7) | (-) | (-) | (7) | (1.2) |
| (with issuance of warrant) | (29) | (15.0) | (14) | (11.6) | (10) | (8.1) | (7) | (5.1) | (3) | (10.7) | (63) | (10.5) |
| <u>Partial payment made; still paying</u> | | | | | | | | | | | | |
| (warrant issued) | 1 | 0.5 | - | - | 1 | 0.8 | 2 | 1.5 | - | - | 4 | 0.7 |
| <u>Warrant Outstanding</u> | 38 | 19.7 | 31 | 25.6 | 21 | 17.1 | 17 | 12.5 | 3 | 10.7 | 110 | 18.3 |
| TOTAL: | 193^c | | 121^c | | 123^c | | 136^c | | 28^c | | 601 | 100.0 |

Source: One week sample all sentenced cases, New York City courts.

a Includes three cases that are not reflected in the county figures.

b County breakdowns not available.

c Totals including cases for which county breakdowns by payment status not available.

notifying the offender that a bench warrant has been issued when he fails to appear.

As these two tables indicate, there are interesting variations in collection rates by county within the city. In Queens, where individual fine amounts are relatively high, collection rates are appreciably higher than in New York County (Manhattan) where fines tend to be low. The difference shows up both in the proportion of total fine amounts that are collected (83% in Queens, compared to 59% in New York County) and in the proportion of fined offenders who pay in full (77% in Queens, compared to 59% in New York County). To some extent, the differences may reflect differing types of caseloads. For example, prostitution-related offenses account for 20 percent of the fines imposed in New York County but for none of the Queens fines, and it appears that these offenders seldom pay their fines unless they are arrested again.⁴

Because there appear to be few courts (in the United States or Western Europe) that routinely analyze their own records to learn about

⁴ We do not know very much about relative collection rates by type of offense. In the New York City sample, some patterns did seem likely but small cell sizes are a problem (see Appendix D, Table D-4). As indicated above, prostitutes are the least likely to pay their fines (only 33% did) but few are sentenced to a fine and the issue is confined to Manhattan only. The other offense group with a relatively low collection rate were those convicted of theft-related offenses; 46 percent paid in full. In comparison, those convicted of assault seemed to pay in full quite frequently (86%) as did those convicted of gambling and motor vehicle offenses (82% each). Between these two groups of offenders, are those convicted of disorderly conduct/loitering (of whom 72% pay), drug offenders (62%) and those convicted of trespass (58%). Again, the size of the sample by offense category tends to be small so the relative differences in these collection rates are probably not stable over time, and also may not reflect the patterns of any other community. In our research on two English magistrates' courts, collection by offense patterns were also hard to discern (again partially because of small numbers in some offense categories). Obviously, larger samples are required to study these patterns adequately.

their collection rates (none that we contacted or heard about), it is difficult to know how representative New York City's performance is with respect to collecting fines from criminal defendants. However, we know of no reason why New York City would be unusual or remarkable in any way that would suggest better performance than other jurisdictions. Indeed, New York City's size and its courts' lack of means to maintain close personal contact between offenders who owe fines and those responsible for their collection would suggest the opposite. And in fact, one of the only other studies we know of in the United States to collect data related to fine collection found 83 percent of the fined misdemeanor cases in Peoria, Illinois were satisfactorily completed, implying that the payment was made (Gillespie, 1982:10). In addition, both our survey data and research from England and Germany indicate that New York City and Peoria are not alone in being reasonably effective at collecting its fines; many places appear to do substantially better.

Using two questions from our telephone survey (those asking respondents for their best estimate of the proportion of fined defendants who pay the entire fine on the same day it is imposed, and the proportion who pay in full within the time granted by the court), there were 24 limited jurisdiction courts (or about a third of those surveyed) whose responses indicated that they are very successful in their collection activities: their court administrators estimated that at least 60 percent of fined offenders pay on the day of sentence and that 80 percent of those given additional time ultimately pay in full. In England, the two magistrates' courts studied by Vera's London Office were similarly successful at collection. In both the central London court and the provincial town court, over half the fined offenders sampled paid immediately (55% and 52%). Ultimately, 73 percent of the

London court sample and 77 percent of the town court sample paid their fines in full, figures which correspond with the findings of an earlier study of English courts by the British Home Office (Softley, 1977).

Data on one German jurisdiction (Albrecht, 1980) are also similar: 64 percent of the fined offenders in the sample paid immediately; ultimately, over 90 percent paid in full.

C. Collection Practices

How do court systems collect the fines they impose? Imposition of a fine is a different matter for a court than the imposition of other sentences (except, perhaps, other monetary penalties) because the court must also execute and enforce it. Although a few state laws give authority to personnel outside the courts to collect fines under some circumstances (e.g., police, probation, corrections), in most jurisdictions the bulk of the collection responsibility rests with court personnel. Very little about this aspect of fining is regulated by statute and, as a result, court systems have had little formal guidance in developing their collection methods. Most of the administrative rules that are formalized by court systems involve only the handling of fine monies and the conduct of audits, so that in their collection practices individual courts tend to be on their own to evolve procedures; in most cases, these tend to be the product of long-established custom.

In practice, American courts employ a range of approaches and techniques in seeking to collect fines they have imposed. Here again, there appear to be significant differences between general jurisdiction "felony-only" courts and limited jurisdiction courts that handle misdemeanors and/or ordinance violations. Differences in collection practices appear to reflect the different types of cases handled. When

a felony court imposes a fine, alone or as part of a sentence, the amount is likely to be higher than in a limited jurisdiction court; the offender may need more time to pay it; and a probation service--often available in a felony court, but not in many limited jurisdiction courts--is likely to be involved in the collection process.

Delayed Payment and Installment Systems

Perhaps the most important aspect of fine collection that tends to be influenced by statutes is the authorization to defer fine payments or to accept them in installments.⁵ If a fine can be collected from a defendant immediately after it is imposed, the court can obviously save itself a great deal of paperwork and subsequent effort aimed at collection. However, there are legal (as well as practical) constraints upon a court's ability to demand immediate payment of a fine.

Some state statutes and appellate decisions prohibit trial courts from jailing indigents solely for failure to pay a fine, and many others require that defendants be given time to pay or be allowed to pay in installments. The movement toward installment payment was given considerable impetus by the 1971 decision of the U.S. Supreme Court decision in Tate v. Short (401 U.S. 395), in which the Court held that

⁵ Deferred payment refers to a system in which the court officially postpones the date at which the amount of the fine is due in full in order to give the offender time to obtain the money. Alternatively, in an installment system, the court typically specifies an amount (a proportion of the total fine) that is due the court on a regular basis (e.g., weekly, monthly) until the full fine has been paid. While these two types of delayed payment systems are conceptually distinct, in practice they may become blurred; this occurs particularly when the court permits an offender to defer full payment repeatedly so long as a good faith effort to comply is shown, generally by paying some part of what is due.

it was unconstitutional for a state to imprison an indigent defendant for default when the original conviction had been for an offense punishable only by a fine. The sentencing court in the Tate case had not given the defendant any opportunity to pay the fine, and this was obviously a key factor in the decision. Noting that "the State is not powerless to enforce judgments against those financially unable to pay a fine," the Court observed that there were numerous alternatives to forthwith imprisonment and cited with approval a number of state statutes providing for installment payment plans (*id.*, 399-400).

In the years following *Tate*, many states added statutory provisions authorizing and encouraging installment payment plans designed to foster, without recourse to jailing, the collection of fines from defendants with limited resources. Thirty-five states explicitly authorize installment payment plans, deferrals, and extensions of time to pay. These are usually authorized in a single provision such as: "When a defendant is sentenced to pay a fine or costs or ordered to make restitution...the court may order payment forthwith or within a specified period of time or in specified installments" (OR. REV. STAT. § 161.675 (1)).

In practice, therefore, courts are under an obligation to provide indigent defendants with time to pay a fine. Given the difficulties (discussed in Chapter II) of determining who is legally "indigent," many courts provide mechanisms for deferred payments and many set up formal or informal installment schemes for most offenders who owe fines. In

fact, in our telephone survey, relatively few courts reported a high percentage of same-day fine payments. Only 24 of our 126 telephone survey respondents (19%) indicated that more than three-quarters of the offenders in their courts paid their fines in full on the same day they were imposed. By comparison, 41 respondents (33%) indicated that a quarter or fewer of the fined offenders in their courts paid in full on the same day.⁶

General jurisdiction courts that handle only felonies are appreciably less likely to emphasize same-day payments than are other types of courts. Only four felony-only courts reported a same-day payment rate of over 75 percent and all of them were courts in which fines are seldom used. In one of the four, the same-day payment policy is closely related to plea and sentence bargaining practices. If a fine is to be part of the sentence in this court, the defendant knows in advance how much it will be and is expected to show up for sentencing with enough money to pay the full amount. In the clerk's words, "the body does not leave unless the money is paid." In general, however, deferred payment is common in felony courts and in the federal system, frequently with the probation department responsible for fine collection. Installment payments often extend through the life of the probationary period. Formal installment plans are less common in limited jurisdiction courts, where the tendency is toward a shorter period during which the payment

⁶ Recall that for the New York City Criminal Court sample, we found that 19 percent paid in full immediately; in the two English magistrates' courts discussed above, it was 55 and 52 percent.

may be deferred. Of seventy-four limited jurisdiction courts surveyed by telephone, fifty-seven said they allow 30 days or less. Our data from the New York City Criminal Court indicate that only about 20 percent of the total who ultimately paid in full (67%) required more than two months to pay.

In New York City, as in many other jurisdictions, judges routinely ask defendants they have sentenced to fines: "Do you need time to pay?" While the defendant may be granted a single deferment of the payment deadline, it is also common for installment payments to be permitted. Repeated requests and granting of deadline extensions are not uncommon either. New York City judges are in some disagreement as to whether installment payment plans facilitate collection. While legal strictures and humane consideration for the poor impel the use of installments, some judges feel that offenders are encouraged to slide and forget their sentence obligations. Sometimes real hardship is seen, but judges also sense that some offenders have already spent, or wish to

spend, their money in other ways.⁷

Record-keeping and information systems

With deferred payment and installment systems a necessary part of most fine collection practices, record-keeping systems are important. It would appear from our survey of court clerks and administrators that their systems are adequate for the purpose of keeping track of payments by individual fined offenders and for flagging cases in which notices or warrants should be issued. About two-thirds of our respondents expressed satisfaction with their systems' effectiveness. However, one quarter of them felt there was need for improvement. This may be related to the fact that over half of all these information systems were entirely manual; only 10 (8%) were computerized fully, although about 38 percent were partially automated.

⁷ One possible method of encouraging prompt payment would be to impose an interest charge or some other type of fee when offenders do not pay within a relatively short period of time set by the court. It appears, however, that this technique is rarely used. When asked directly whether interest, or a special collection fee or surcharge, was charged on fine amounts not paid immediately, only three of the 126 telephone survey respondents--all from municipal courts--answered affirmatively. In New York City, for example, penalties for late fine payments are applied routinely only by the Parking Violations Bureau for parking tickets; no such system exists for other types of summons or criminal fines. Some of the courts we surveyed reported that they charged defendants with court costs when a notice or warrant was issued, but this practice also does not appear to be common.

Another possible method of encouraging immediate payment in full, at least in routine types of cases from offenders who are not poor, is to accept payment by credit card. Six courts we surveyed told us that they did so. All were high volume courts that handle misdemeanors and/or ordinance violations. Based on our site visits to three of these courts (Milwaukee Municipal Court; the Circuit Court of Dane County, Madison, Wisconsin; and Phoenix Municipal Court in Arizona), credit card payment appears to work well but to be a convenience largely for middle-class offenders paying traffic fines; but even then this mechanism did not involve a large number of fine-payers. Despite the willingness of credit card companies to work out arrangements so that courts can pass on service charges to their clients, the administrative staff of many courts have never even considered the possibility of this payment mode or have rejected it out of hand as "too much hassle."

While these systems may be relatively effective at keeping records of who has paid and who has not, their effectiveness is questionable in terms of their ability to provide relevant management information about the court's overall collection activities. As we have noted, only 15 respondents were able to answer a question asking for fine amounts imposed during the past year, and several of these were estimates. There are also no readily accessible statistics on fine amounts by type of charge, on the relationship of charge and/or fine amount to collection rates, or on other issues related to the formation of policy and the management of resources. Although the relevant data elements are in court files, the court's record-keeping systems are not organized to provide the information that is essential to measure performance, to identify problems, and to aid in planning for improvements in court operations. And this is not simply a matter of automation; only one of the ten respondents who said that their court had a fully computerized system was able to answer the question about the amount of fines imposed during the past year.

Monitoring systems

While all courts have some type of record system to keep track of who owes what amount, courts differ considerably in their organizational practices for monitoring individual payments. In some jurisdictions, offenders owing fines are monitored quite closely with court, probation, or other official personnel providing both individualized payment schedules and individualized attention to their compliance. In other jurisdictions, fine cases are treated routinely with relatively little individual attention. While we can provide some illustrations of these differences in practice, we cannot provide information on their

frequency or distribution in courts of different types around the country.

The U.S. Attorney responsible for fine collection in New York's Southern District told us that "the key to success in collecting money owed the Government rests in prompt accounting and necessary and repeated communication with the debtor." This theme was repeated by fine collection personnel in state courts as well, but courts have different ways of doing it. In the federal system, although U.S. Attorneys are responsible for the collection of fines, Probation Officers are also involved. For example, the Deputy Director of the U.S. District Court Probation Office in Washington, D.C. told us that 16 percent of his 982 probationers had fines to pay. It is the responsibility of probation officers to work out payment plans for their charges, to let the sentencing judge know when a probationer is in default, and to make a recommendation to the judge about whether probation should be extended until full payment is made or allowed to expire without full payment, or whether a violation of probation should be considered (raising with it the possibility of jailing the offender for default).

Some states, such as Georgia, use a similar system. Probation officers set the fine payment terms and collect the money. They also send out form letters and make telephone calls to encourage payment when it is not forthcoming and, in rural areas at least, make reminder visits to those who owe fines. The fine sentence is taken seriously by probation personnel, as indicated by the Director of the DeKalb Probation Department, who instructs his officers to "push for the money," but not to push someone too far because it is neither rehabilitative nor likely to result in collection.

The Delaware Court of Common Pleas employs a special Collection Officer to monitor and to encourage fine payment. The court has vested considerable discretionary authority in this man. He can accept or reject offenders' excuses, extend time for payment, and bring a case back to a judge, if he feels this is warranted, with a recommendation for leniency or the execution of more coercive forms of enforcement.

In the Phoenix (Arizona) Municipal Court, a Fines Collection Coordinator and her staff set up installment payment plans and attempt to use personal contact with offenders to elicit payment. This office is seen by other officials in the system as rendering "humane" service to offenders in contrast to the prosecutor and judge who are seen as treating cases formally and with a vocabulary uncommon to most offenders. The current Coordinator reflects this orientation to the extent that she wants to deal with offenders individually and to accommodate their particular problems in order to obtain their compliance with collection schedules.

It appears to us, however, that in large urban courts, monitoring procedures tend to be more routinized and less individualized, perhaps because of the size of the caseloads and the traditional (and possibly out-moded) record-keeping. Even in Georgia's largest counties, probation "supervision" is likely to consist only of receiving payments and issuing reminders or warnings concerning delinquent payments. In fact, Fulton and DeKalb counties have designated these fine-owing probationers as a "nonsupervision" caseload (estimated at 40% in both). In New York City, the cases of those owing fines remain on the court calendar; court clerks monitor payments only insofar as the offender either appears or does not appear for each scheduled court appearance to pay what is owed

on the fine. If the offender appears, the case is recalendared until full payment has been made; if the offender does not appear, the clerk indicates this to the judge at the end of the day and a bench warrant is ordered. If a non-appearing offender comes into the court at a later date to pay the fine, the warrant is vacated and the case re-calendared if further payments are needed to satisfy the obligation. The only "individualized" part of this process is the often hasty discussions between the offender, the clerk, and the judge, as to whether additional time will be permitted for payment.

We do not know the relative effectiveness of any of these systems because, as we have stressed, courts do not keep statistics on their collection rates. It is our impression though, from having observed a number of different collection systems, that whatever its structure, its management will be more effective if those who are responsible for collection are held accountable for their performance and if that responsibility is not diffused across too many people or offices. Further study is needed, however, to know if this is an accurate perception and, if so, how it can be accomplished most successfully.⁸

D. Reasons Perceived for Non-Collection

As this discussion indicates, it is difficult to know the level of success American courts have in collecting fines, although the data we have assembled from record-based research in New York City, England

⁸ Research in England suggests that officials in the Fines offices of some magistrates' courts have considerable administrative discretion to alter the payment terms for fined offenders who are having difficulty with their payments (Morgan & Bowles, 1983). It may be that this control, combined with their accountability for collections, affects the collection success of different courts.

and Germany, and from our telephone survey, do not support the rather widespread notion in the United States that collection problems are insurmountable. This does not mean, however, that there are no problems with collection. For some jurisdictions the problems may be of considerable magnitude. Offenders' financial insufficiency and their poverty are certainly a major reason why so many courts use deferred payment and installments to collect fines. But there appears to be a broader range of reasons why these mechanisms do not always ensure collection.

To help understand what clerks and court administrators see as the most important reasons for non-collection in their jurisdictions (regardless of the overall magnitude of the problem), we asked the telephone survey respondents to indicate the extent to which several commonly raised factors are frequently, sometimes, or rarely a reason for non-collection when fines are difficult to collect. As Table III-4 indicates, defendants' indigency was the most frequent reason given, followed by difficulties in tracking down defendants who leave the vicinity and lack of cooperation from law enforcement agencies responsible for serving warrants. It is interesting that defendants' "realization that nothing serious would happen if they failed to pay" was identified as a frequent reason for nonpayment by only 21 respondents; but it was considered to be a reason at least sometimes by an additional 38 respondents. Administrative deficiencies in the court--such as inadequate record-keeping and slowness in issuing warrants--were seen only rarely to be reasons for nonpayment.

What is particularly interesting, however, is the contrast between respondents' perceptions about the reasons for non-collection in

Table III-4

PERCEIVED REASONS WHEN THERE IS DIFFICULTY IN COLLECTING FINES (ALL COURTS)

| Perceived Reasons for Non-Collection | Frequently a Reason | Sometimes a Reason | Rarely a Reason | Total |
|---|---------------------|--------------------|-----------------|-------|
| A. Defendant is indigent | 47 | 29 | 44 | 120 |
| B. Defendant leaves vicinity | 37 | 44 | 38 | 119 |
| C. Law enforcement agencies give low priority to serving warrants for non-payment | 35 | 28 | 53 | 116 |
| D. Defendant knows nothing serious will happen to him if he fails to pay fine | 21 | 38 | 60 | 119 |
| E. Court's record-keeping system not adequate | 7 | 15 | 97 | 119 |
| F. Arrest warrants not issued promptly | 7 | 30 | 80 | 117 |

Source: Telephone survey

general jurisdiction and in limited jurisdiction courts (Table III-5). Half the respondents from upper level courts (25 out of 52) perceived indigency to be a frequent reason for non-collection (and fewer than a quarter reported it was only rarely a reason). In contrast, this concern was less pronounced among the respondents from limited jurisdiction courts: although twenty-three out of 74 (31%) said indigency was frequently a problem in cases of non-collection, almost half (32) felt it was rarely the reason for non-collection. Respondents from these courts, unlike those from upper level courts, identified the problem of defendants leaving the jurisdiction and the low priority given the service of warrants (i.e., enforcement problems) as important reasons for non-collection in their courts.

There are several possible explanations for these somewhat different perceptions about the frequency with which indigency is the reason for non-collection in difficult cases. One is that the two types of courts may deal with defendants who have different socioeconomic circumstances. Many limited jurisdiction courts handle a substantial number of traffic offenses (including DWI) and violations of regulatory ordinance, many of which are committed by offenders with more financial resources, in addition to other types of criminal cases while the majority of crimes dealt with by felony courts may have been committed by poorer offenders. A second possibility is that while the economic situations of the defendants may not differ appreciably, the fine amounts are higher in the general jurisdiction courts; the greater the discrepancy between a defendant's income and the amount of the fine, the more likely it may be that poverty or indigency will be a significant factor. A third explanation is that the two types of courts may have

Table III-5

PERCEIVED REASONS FOR DIFFICULTY IN
FINE COLLECTION, BY TYPE OF COURT

| Type of Court | A. Defendants's Indigency | | | | |
|---|------------------------------------|-----------------------|--------------------|-------------|-------|
| | Frequently a Reason | Sometimes a Reason | Rarely a Reason | DK or NA | Total |
| Limited Jurisdiction | 23 | 17 | 32 | 2 | 74 |
| General Jurisdiction Felony, Misdemeanor, and Ordinance Viol. | 15 | 6 | 7 | 0 | 28 |
| General Jurisdiction Felony Only | 10 | 6 | 5 | 3 | 24 |
| Type of Court | B. Defendant Leaves Vicinity | | | | |
| | Frequently a Reason | Sometimes a Reason | Rarely a Reason | DK or NA | Total |
| Limited Jurisdiction | 24 | 28 | 20 | 2 | 74 |
| General Jurisdiction Felony, Misdemeanor, and Ordinance Viol. | 7 | 10 | 10 | 1 | 28 |
| General Jurisdiction Felony Only | 5 | 8 | 8 | 3 | 24 |
| Type of Court | C. Low Priority to Warrant Service | | | | |
| | Frequently a Reason | Sometimes a Reason | Rarely a Reason | DK or NA | Total |
| Limited Jurisdiction | 29 | 17 | 24 | 4 | 74 |
| General Jurisdiction Felony, Misdemeanor, and Ordinance Viol. | 4 | 7 | 17 | 0 | 28 |
| General Jurisdiction Felony Only | 4 | 3 | 12 | 5 | 24 |

(CONTINUED)

Table III-5 (continued)

| Type of Court | D. Defendants Know Nothing Will Happen | | | | Total |
|---|--|-----------------------|--------------------|-------------|-------|
| | Frequently a Reason | Sometimes a Reason | Rarely a Reason | DK or NA | |
| Limited Jurisdiction | 15 | 24 | 32 | 3 | 74 |
| General Jurisdiction Felony, Misdemeanor, and Ordinance Viol. | 4 | 8 | 16 | 0 | 28 |
| General Jurisdiction Felony Only | 2 | 5 | 14 | 3 | 24 |
| Type of Court | E. Inadequate Record System | | | | Total |
| | Frequently a Reason | Sometimes a Reason | Rarely a Reason | DK or NA | |
| Limited Jurisdiction | 3 | 10 | 58 | 3 | 74 |
| General Jurisdiction Felony, Misdemeanor, and Ordinance Viol. | 2 | 3 | 23 | 0 | 28 |
| General Jurisdiction Felony Only | 2 | 2 | 17 | 3 | 24 |
| Type of Court | F. Warrants Not Issued Promptly | | | | Total |
| | Frequently a Reason | Sometimes a Reason | Rarely a Reason | DK or NA | |
| Limited Jurisdiction | 3 | 19 | 49 | 3 | 74 |
| General Jurisdiction Felony, Misdemeanor, and Ordinance Viol. | 2 | 5 | 21 | 0 | 28 |
| General Jurisdiction Felony Only | 2 | 5 | 12 | 5 | 24 |

Source: Telephone Survey

different traditions with respect to the use of fines and different working definitions of what constitutes "indigency" for purposes of sentencing.

Whatever the reasons for this discrepancy in perceptions about the frequency with which indigency is a reason for non-collection, the survey responses call into question some of the conventional notions in this area. Although indigency is often perceived to be a major reason for non-collection, clerks and court administrators in many jurisdictions do not consider it to be a significant factor. Thus, the indigency issue appears to be a very complex one, one which manifests itself in different ways in different places and which may have as much to do with perceptions as with real experiences. Although we cannot be certain what the magnitude of the non-collection problem is in American courts, indigency is not universally cited as the reason when collection is difficult, especially in lower courts which also tend to use fines most frequently as a criminal sanction.

E. Characteristics of Courts that Appear Successful in Fine Collection

One way to begin the process of identifying characteristics of courts that appear successful in collecting fines is to compare them with those that appear less successful. Our measures in this area are primitive, but two questions in our survey of court clerks and administrators do provide us with rough indicators of apparent collection success. One question asked respondents for an estimate of the proportion of defendants who pay their entire fine on the day it is imposed; the other asked for the proportion of those who, when granted time to pay the fine, actually pay the entire amount during the period allowed by the court. Using responses to these questions, we have identified limited jurisdiction courts that claim "high collection rates" insofar

as they report that at least 60 percent pay on the day the fine is imposed and that at least 80 percent of those given additional time ultimately pay in full. Courts reporting that 40 percent or less pay immediately and that 50 percent or less of those given time to pay ultimately do are considered to have "low collection rates." Table III-6 compares these two groups of limited jurisdiction courts along several dimensions.

Respondents in courts indicating high collection rates were much less likely to report that their courts commonly use installment systems than were respondents in courts with less apparent collection success.

Only one of the 24 courts reporting high collection rates typically allows more than 30 days for payment, and eleven reported that a period of two weeks or less is used. By contrast, four of the twelve courts reporting low collection rates indicated that the usual period was over 30 days, with two reporting time periods as long as 180 days.

Respondents in the courts reporting high collection rates were less likely to see defendants' indigency as a frequent reason for non-collection, compared to 50 percent of their counterparts in courts reporting low fine collection rates.

Finally, two different sets of responses suggest that courts which appear successful in collection are more likely to report relatively strict enforcement policies than are the courts reporting low collection rates. First, respondents in the high collection courts tend to feel that their courts are prepared to impose sanctions on defendants who fail to pay, and that defendants know it. Only one of the 24 said that defendants' knowledge that nothing serious will happen to them was a frequent reason for non-collection. By comparison, 40 percent of the

Table III-6

COMPARISON OF LIMITED JURISDICTION COURTS WITH HIGH AND LOW ESTIMATED COLLECTION RATES

| Reported Characteristics of Courts | Estimated Low Collection Rate Courts (N=12) | Estimated High Collection Rate Courts (N=24) |
|--|--|---|
| 1) Installment System | | |
| a) Percent Who Use | 50% | 21% |
| b) Percent Who See Problems with Installments | 90% | 79% |
| 2) Time Allowed to Pay | | |
| a) Average Time | 64 days | 22 days |
| b) Median Time | 21 days | 21 days |
| 3) Percent Who See Indigency as Frequent Reason for Non- Collection | 50% | 17% |
| 4) Percent Who See "Nothing Will Happen" as Reason for Non- Collection | 40% | 4% |
| 5) Action Taken on Default | | |
| a) Percent Who Commonly Jail | 50% | 75% |
| b) Percent Who Commonly Extend | 60% | 50% |
| 6) Type of Record System | | |
| a) Percent Manual | 50% | 58% |
| b) Percent Automated | -0- | 13% |
| c) Percent Mixed | 50% | 29% |
| 7) Extent of Fine Use: Half or More | 90% | 88% |

respondents in courts reporting low collection rates felt that defendants' beliefs that there would be no enforcement was a frequent reason for non-collection in their courts. Second, three-quarters of the respondents in high collection courts said that, when defendants were before the court for nonpayment, jail was often used as a response; this compares with half the courts reporting low collection rates.

We find it interesting that courts which report success at fine collection are characterized by the limited use of installment plans, short time periods for payment, the perception that indigency is not a frequent reason for nonpayment, and, finally, by relatively strict enforcement policies. We caution, however, that it is by no means clear that these are causal factors. In fact, it is very likely that other characteristics of defendants, of offenses, and of court process are influential in determining the effectiveness of collection. Multi-jurisdictional research that collects a wide range of data about each court will be required before we can establish what factors affect the success of various collection strategies with different offender populations.

In the last two chapters, we have suggested that fines are used more widely in American courts than has been previously recognized and that their collection (here, in England, and in Germany) is more common than many practitioners in the field tend to believe. Nevertheless, the issue of non-collection cannot be ignored, especially if we are to consider the expanded use of fines as criminal penalties, perhaps in larger amounts for some types of more serious offenses. We turn, therefore, to the question of fine enforcement. If fines cannot be enforced when payment is not forthcoming, because there are practical or constitutional impediments, then fine use is extremely problematic.

CHAPTER IV THE ENFORCEMENT OF FINES

When a court imposes a fine, it either requires the offender to pay immediately or sets a time period within which the fine must be paid. We are using the term "enforcement" here to refer to the process by which courts (and/or other governmental agencies involved in fine collection) seek to ensure that a fine is paid when the time originally fixed by the court has passed without full payment. As Carter and Cole have observed (1979:160), both the real difficulties with enforcement and the perception that such difficulties are insurmountable, create major drawbacks to the fine's use as a sanction. Enforcement of a fine may require substantial resources and administrative effort (including the costs of notification, issuing warrants, conducting hearings on the reasons for nonpayment, and perhaps jailing the offender); thus the concern is often expressed that enforcement could exceed the original amount of the fine. Enforcement also raises a variety of legal as well as practical and humanitarian issues when the non-paying offender is poor and failure to pay may not be willful. Again, however, as with virtually all aspects of fine use, there has been little data available to help assess the extent to which these concerns reflect problems in actual practice.

A. Enforcement Methods

The specific procedures used to enforce fines vary considerably from court to court, and are influenced by a variety of political,

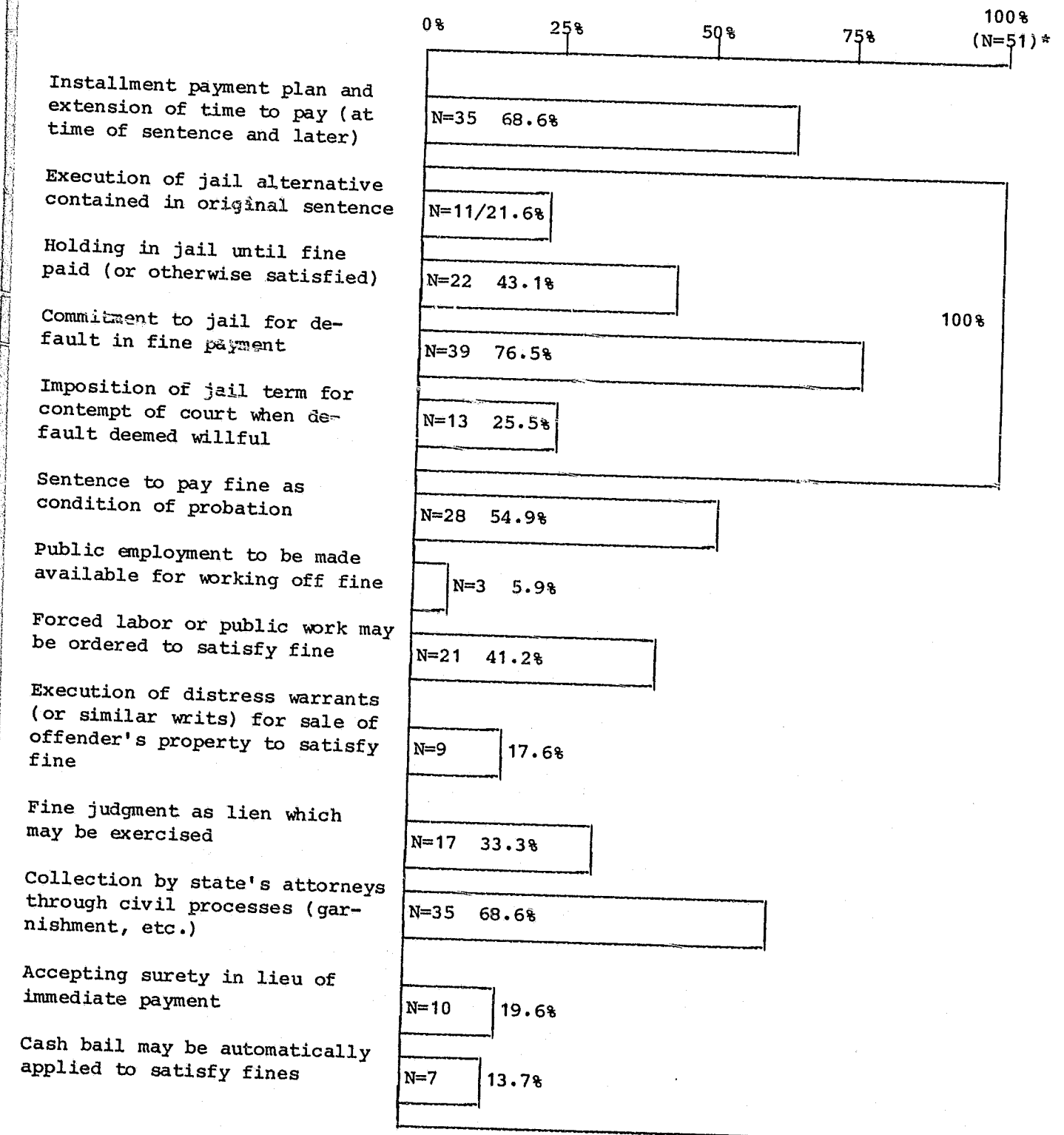
administrative and legal factors. State statutes contain many provisions relating to the enforcement of fines, reflecting apparent legislative intent to give "teeth" to such sentences. Figure IV-1 summarizes the ways in which state lawmakers have attempted to foster or compel payment of fines in criminal cases.

As is clear from Figure IV-1, over two-thirds of the states explicitly authorize installment or deferred payment plans. As we have already seen, installments and deferred payments tend to be many courts' first response to collecting a fine from offenders who are unable to pay immediately, regardless of whether this practice is specifically authorized by statute. When the time allowed for payment has passed and payment is still not forthcoming, courts follow up using a variety of strategies to encourage payment. These tend to be selected largely on the basis of local court custom and include various forms of notification, summons, and arrest warrants. When these too have failed to result in payment, courts may then turn to the more coercive devices to compel payment that are specifically permitted by their state's statutes. As seen in Figure IV-1, these include a variety of civil procedures (including garnishment), public employment, forced labor, and execution of distress warrants for the seizure and sale of offenders' property. However, imprisonment for failure to pay a fine is by far the most frequent coercive enforcement mechanism provided by state statutes for the enforcement of fines, although it is sometimes found in the guise of probation revocation or punishment for contempt of court.

In the remainder of this chapter, we will review what we have learned about how courts attempt to enforce fine payments, including the ways in which they use jail or prison as an enforcement device to compel payment or as an alternative punishment. As the statutory provisions

FIGURE IV-1

Methods Authorized by U.S. State Statutes to Foster or Compel Fine Payment in Criminal Cases



*District of Columbia included.

imply, there is a widespread belief that the threat of incarceration is an essential component of effective fine enforcement. However, concern is widespread about the actual jailing of poor criminal offenders who are in default because it can be both inhumane and costly, especially as jails and prisons become more overcrowded.

B. Enforcement and the Threat of Imprisonment

When an offender does not pay within the time initially allowed by the court, there are a variety of actions the court can take before confronting the serious issue of whether to impose a jail sentence as an alternative sanction or as a method to compel payment. One obvious approach is for the clerk of court simply to send a letter reminding the offender of the overdue amount, asking for prompt payment, and possibly suggesting that more serious consequences will follow if payment is not forthcoming. In the same vein, the court may send the offender a summons to appear in court to explain why he has not paid, or may make a telephone call to tell him that unless payment is made within a short period of time a warrant will be issued for his arrest.

Such "notification" procedures appear to be a potentially successful (as well as relatively inexpensive) method of enforcement. Recalling our discussion in the last chapter about England and Germany, there is some empirical evidence that notification to an offender that fine payments are in arrears (generally also making it clear that the court is prepared to pursue more coercive methods to ensure collection if payment is not made) has positive results: in both the English city and the town magistrates' courts studied by Vera, almost a third of those "reminded" paid in full after receiving letters, and in the

German town studied by Albrecht, almost half responded to reminder letters with full payment.

Yet, as obvious--and inexpensive--as this strategy may seem, it appears from our telephone survey and site visits that relatively few American courts of any type make such notification or reminder calls to offenders who are in arrears.¹ Federal district courts and state courts of general jurisdiction, where probation services are often involved in the fine collection process, appear to be more likely to make this type of more personal contact than are other courts. While virtually all courts will issue an arrest warrant, sooner or later, in the event of continued nonpayment, the survey suggests that limited jurisdiction courts (which are the heaviest users of fines) seem somewhat more likely than general jurisdiction courts to move immediately to an arrest warrant without first making efforts at notification.

In a few jurisdictions, offenders who fail to pay a fine when it is due can (at least under some circumstances) be arrested on a warrant and taken directly to jail, usually to serve a jail term that was suspended at the time of the original sentence. More typically, however, an arrest warrant is issued for the return of a defaulting offender to

¹ In contrast, in the English system, the reminder is the most common first step taken to collect the fines after the time for payment has passed. Data collected by the Vera London Office suggest that courts not using reminders in this way were the least successful in obtaining payment of the several courts studied.

Other cross-jurisdictional research in England has emphasized the promptness with which action is taken once the court identifies someone as in default. Softley and Moxon (1982:9) report that the speed with which action is taken (be it reminder, a letter, a means warrant, etc.) is strongly correlated with the court's success at collecting fines. They also report a strong relationship between collection success and the average interval between enforcement actions when the first attempt was unsuccessful (p. 9).

court, but the warrant is not served. Reasons differ but it appears generally to be because sheriffs or police do not have sufficient resources to pursue nonserious offenders vigorously (as is also the case in the English system). Sometimes, however, they choose not to serve the warrant because they do not expect the offender to be punished if returned. Thus warrants for nonpayment of a fine tend to have low priority with the police or sheriff's offices that are charged with serving them, and the warrant is activated only when (and if) the offender is rearrested. Apocryphal stories are told in a few jurisdictions about sheafs of warrants found in the glove compartment of a police car five years after their issuance.

The enforcement situation (or apparent lack thereof), however, may not be as bleak as this suggests. One fairly common approach when an arrest warrant has been issued for nonpayment is for the police or sheriff's department to send a letter to the defaulting offender informing him that a warrant has been issued for his arrest and that it will be executed if he does not pay promptly.² This occurs in New York City. The Police Department's Warrant Squad, faced with the lack of resources noted above, places low priority on serving these warrants; but it routinely sends out warning letters designed to scare defaulters into returning to court. Some, of course, will never receive or will ignore the warning. Some may have prior experience with the courts that

² This also occurs in England. Although most magistrates' courts first issue a reminder notice, others move directly to a means warrant (i.e., a warrant requiring the offender to appear in court for a means inquiry hearing). However, as the burden on the police to serve large numbers of means warrants has increased, they have tended to adopt a written notification system, telling the offender by mail or delivered notice that there is a warrant at the police station for his/her attendance at a means inquiry on a certain date. The means warrant is thus a glorified reminder in the hands of the police.

encourages them to believe the warrant will never be served, and others may have received so many other types of dunning letters from bill collectors that they have learned to put them in a drawer and live in peace. Still others may not read well enough to understand what is required of them or to be intimidated by the threats. Nevertheless, these letters appear to have some impact; the New York City experience is consistent with English and German experience if one looks at these post-warrant letters as a form of "notification."³

The New York City Police Department's Warrant Squad itself believes that the threatening notices it sends out accomplish returns to court in many cases. Warrant Officers remember a period when their computer was unavailable to generate these letters and say that during this period their rate of return on warrants dropped off sharply. While there are no official figures available to document this effect, our research sample of cases sentenced in the New York City Criminal Court provides some indirect but supportive evidence. Of the 601 offenders in our citywide sample who were fined, 315 (52%) failed to pay either immediately or within the time required by the court; they had a warrant ordered for their arrest and the Warrant Squad sent them a "notification" letter. Thirty-eight percent returned to court and paid in

³ The procedure in New York City for handling warrants issued in the case of such fine defaults, however, is extremely routinized; in fact, the notification that a warrant for the offender's arrest has been issued does not specifically indicate that the offender is in arrears on a fine payment. What triggers the issuance of an arrest warrant in New York City in default cases is the defendant's failure to appear in court on the scheduled date to pay the fine (recall that every case in New York City in which a fine payment is due is calendared). Therefore, the arrest warrant that is issued and sent to the offender indicates only that his presence is required in court or he will be arrested; the warrants are the same whether the offender has missed a post-sentencing court appearance for a fine payment or a pretrial court appearance.

full; six percent returned to court and were resentenced to a reduced fine amount or to a non-fine, non-incarcerative sentence; one percent returned and were still making payments at the time of data collection (one year after sentencing); 20 percent returned to court (probably after an arrest on a new charge) and had the jail alternative to the fine executed; finally, 35 percent failed to return to court, were not rearrested and thus the warrant for nonpayment was still outstanding at the time of our data collection. Obviously, we cannot be certain of the role played by the Warrant Squad's "notification" procedure, but 45 percent of the offenders in arrears returned to court after it was set in motion and either paid the fine or were resentenced. Overall, therefore, with this relatively inexpensive warrant/notification process (combined with arrests on new charges) as the court's only means of ensuring a fine sentence is not disregarded, New York City's Criminal Court successfully enforced just over 80 percent of the fine sentences it imposed, and in some counties (e.g., Richmond and Queens) the court was even more successful (refer back to Table III-3 in Chapter III).

Generally, in New York and elsewhere, an offender who has failed to make timely payment of a fine, and who either returns to court voluntarily or is arrested for nonpayment or on a new charge, will be brought before a judge who will inquire into the reasons for nonpayment and decide what is to be done. We were told over and over again around the country (and in England as well) about how effective the threat of imminent jailing was in this situation in getting offenders to pay the full amount of their fines, often after making a phone call to family members. One American court clerk called it "the miracle of the cells."

We observed a "miracle of the cells" in a New York City lower court when a defendant had defaulted in paying a \$100 fine and had been returned on a warrant discovered when he was arrested for a new offense. When jail was mentioned, his wife rushed to the front of the courtroom to speak with the court officer about how she could settle his fine. She departed immediately, presumably to get the money, and the court officer instructed corrections personnel to keep the defendant in the holding cell and not to send him to the county jail because he was likely to be released quickly. This same "miracle" has been noted repeatedly by observers in European courts that use fines heavily, and it is documented by most of the research they have done.⁴ It is one of the reasons practitioners and policymakers are often extremely hesitant to abandon the threat of imprisonment as the ultimate enforcement device.⁵

⁴ Because this phenomenon is so common in English lower courts, Wilkins (1979) has urged the establishment of reception centers where fine defaulters might be held prior to their transfer to prison so that arrangements for paying their fine might proceed without the costly administrative task of full admission to prison.

⁵ It is not only in the enforcement of fines that the threat (and actual use) of jail is considered essential. In the collection of child support payments, there is evidence that serious enforcement efforts backed up by the threat and imposition of jail sentences is extremely effective. David Chambers, in a recent and detailed study of child support enforcement, reports: "Genesee and many other Michigan counties are remarkably successful at their job. Michigan as a whole collects more money per case from its fathers than any other state in the country.... [I]n the context of child support, the use of jailing, when coupled with a well-organized system of enforcement, produces substantial amounts of money both from men who are jailed and from men who are not" (1979:4,9).

It is perhaps ironic that Delaware, the only state to have prohibited jailing as a device to compel fine payment, nevertheless provides for a contempt sentence to jail when an offender fails to comply with a community service alternative to paying a fine. Although jail is little used for this purpose in Delaware, the threat of possible jailing may nevertheless be important in inducing fine payment. As the Collection Officer for Wilmington's Court of Common Fleas told researchers, he often uses the threat of Smyrna State Prison, a place with a bad reputation, to worry defendants into paying their fines. He capitalizes upon knowledge that brief detention in the court's basement lock-up gives the defaulting fine payer a taste of jail which "scares and upsets them." He visits these worried people in the detention cells to work out how they will satisfy their fine obligation.

Even when offenders are placed on probation as a device to encourage fine payment (as they commonly are in Georgia), it is again the threat of jail that is the ultimate enforcement factor. If payment is not satisfactorily completed, the offender's probation could be revoked and he could be sent to jail. In practice, we were told that even highly conservative judges in Georgia rarely revoke probation merely for nonpayment of a fine; they usually are faced with corroborative evidence of willful noncompliance with other probation terms as well. However, unless they are very experienced with the courts, probationers may believe that if they do not pay the fines they owe, they will go to jail. And thus, again, while jailing may rarely be effected, its threat is thought to be integral to fine enforcement.

Although imprisonment has been the traditional force behind efforts to enforce fine payment, there is growing controversy in America

about whether it should be used at all, and if used, how it should be applied. Some writers have advocated imprisonment, fearing that without this threat, an offender would not pay. Others feel that fines defaulters should be jailed only as a last resort, in the absence of other feasible and available sanctions. The British clearly believe that the threat of prison is an essential component to effective and broad utilization of fines, and are puzzled by American reluctance to impose jail on defaulting offenders. In England, as in Delaware and in the minds of experienced court clerks we interviewed around the country, it seems to be the threat of prison and a brief taste of it that are thought to be most effective in eliciting payment. There are many so-called "prison receptions" (intakes) for fine default in Britain, although most of these people are not held long. Observers estimate that while at least twenty-three percent of British prison admissions are for fine default, only two percent of the prison population remains incarcerated for default. It is interesting that the two percent is beginning to trouble some British observers and policymakers. Even though there are relatively few offenders who are not able to buy their release, prison over-crowding has led to questioning the appropriateness of filling tight prison space with such minor offenders, especially when some of these are chronic public inebriates.

It appears that almost every defendant brought before an American court for nonpayment of a fine gets queried, however perfunctorily, about the reasons for his nonpayment. If he has money and the default has been "willful," the choice is relatively easy: if "the miracle of the cells" does not take place, the judge can jail the offender, with the mechanics differing from state to state. But if the defendant is

without funds, the "miracle" cannot take place and the options faced by the court are more complicated. Our observations suggest that judges often deal with this problem by accepting a defendant's plea of poverty and either extend the time to pay or remit the fine. But this approach is by no means universal. Over half of the respondents to our telephone survey said that defendants in their courts are commonly jailed for default in payment. Even in New York City, where court officials themselves believe enforcement to be relatively lax, our data indicate that non-paying offenders who are returned to court and do not pay are almost always jailed.⁶

C. Imprisoning Indigents for Default

Clearly the threat of imprisonment is considered an important dimension of successful enforcement. With offenders who have financial resources, this threat can be backed up with actual imprisonment in the event of willful nonpayment. With offenders who do not have resources, or who claim not to have them, however, the situation is much more complex both legally and practically.

⁶ One of the questions in the survey of clerks of court and court administrators asked who was responsible for deciding what action is to be taken when a defendant fails to pay within the allotted time. Although cogent arguments can be made for making this an administrative matter to be handled by court staff and/or the probation service under guidelines set by the court, it appears that in most American courts surveyed this decision is made by a judge. In 73 of the courts surveyed (58%), the respondent said that only the judge could make such a decision; in an additional 19 courts (15%), the judge was said to make this decision in conjunction with some other official, including the clerk of court, the prosecutor, a probation officer, etc. (see Table B-2 in Appendix B).

As we have noted before, we have found that there is considerable misunderstanding around the country about the current state of American constitutional law as it pertains to the jailing of indigents for failure to pay a fine. Although, at the present time, the restrictions imposed by federal and state courts are actually quite limited, we have found that many people, including lawmakers and judges, have understood their collective holdings to bar imprisonment of any indigent who defaults in payment of a fine (and some even believe that indigents may not be fined at all). This misunderstanding of the law has apparently created a situation where the poor are sometimes sentenced directly to short jail terms to avoid the apparent illegality of enforcing fines. This phenomenon was illustrated in research done by the New York State Bar Association in rural areas of the state during the 1970s. It revealed that poor defendants were sometimes sentenced to jail because judges did not believe they could legally fine them (Spiegler, 1980).⁷

If fines can be ignored with impunity by a large proportion of the relatively poor defendants who face sentencing in American courts because the fines are unenforceable, then their use as a sanction is extremely problematic. Therefore, we would like to review the issue of the constitutionality of imprisoning indigents for their failure, solely due to indigency, to pay a fine imposed upon conviction for a criminal offense. Recognizing, however, that American judges at all levels seem

⁷ A participant in that study told us that he also suspected an opposite effect stemming from right-to-counsel cases like Argersinger v. Hamlin (407 U.S. 25, 37 (1972)). Because such cases have required that defendants who face a jail sentence be represented by counsel, some defendants may be fined because that was more convenient for the court than appointing counsel, but without any regard to whether they could pay the fine or not or whether this was an appropriate punishment in other ways. (Personal communication, Steven Mendelsohn, Vera Institute of Justice, November, 1981.)

to have limited their use of jail as an enforcement tool beyond that required by the Supreme Court's decisions, whether in an effort to avoid possible constitutional problems or because of sensitivity to social problems, we will then turn to a discussion of the alternative methods that exist to enforce fines without moving from the threat of jail to its imposition.

A probation official in Georgia expressed to us the opinion that the practice of making fine payments a condition of probation in that state's courts was a way around "the Supreme Court's prohibition on fining indigents." There is, however, no U.S. Supreme Court decision so sweeping. What the Supreme Court has addressed, in three leading cases, is the constitutionality of imprisoning indigents for their failure to pay a fine, when that failure is due solely to indigency. Although these cases set limitations on a court's use of jail as a response to an indigent offender's fine default, the decisions still appear to allow considerable latitude for state legislatures and local courts to develop and implement effective enforcement policies including the use of imprisonment as an ultimate sanction for default (see Dawson, Working Paper #4, 1982).

The first decision was Williams v. Illinois 399 U.S. 235 (1970). In that case, the Court ruled that under the Equal Protection Clause of the Fourteenth Amendment an indigent defendant who had failed to pay a fine sentence and costs, solely because of his lack of financial resources, could not be imprisoned for default for a period longer than the maximum prison sentence authorized by statute for the offense of which he was convicted. The opinion observed that "once the state has defined the outer limits of incarceration necessary to satisfy its

penological interest and policies, it may not then subject a certain class of defendant to a period of imprisonment beyond the statutory maximum solely be reason of their indigency "(id. at 241-42).

Less than a year later, the Court decided Tate v. Short, 401 U.S. 395 (1971), a case in which the defendant had originally been sentenced by a Texas court to pay fines totalling \$425 for traffic offenses punishable only by a fine. He was unable to pay the fine because he was indigent and the trial court--without giving him any opportunity to pay the fine--ordered that he be committed to prison for a period sufficient to satisfy the fine at the rate of \$5 for each day served. Adopting a position previously expressed by four of the Justices, the Court held that the rationale of the Williams case also covered the situation where an indigent defendant was convicted of an offense punishable only by a fine:

the same defect condemned in Williams also inheres in jailing an indigent for failing to make immediate payment of any fine, whether or not the fine is accompanied by a jail term and whether or not the jail term extends beyond the maximum term that may be imposed on a person willing and able to pay a fine. In each case, the Constitution prohibits the state from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full (401 U.S. at 398).⁸

⁸ The quoted material originally appeared in a concurring opinion by Justice White, joined by Justices Brennan, Douglas, and Marshall in Morris v. Schoonfield (399 U.S. 508). That case, which involved issues similar to those later addressed in Tate, was not decided on the merits. Instead, it was remanded to the lower court, to give that court an opportunity to reconsider its earlier decision in light of the ruling in William v. Illinois and in light of new state legislation dealing with the problem of fine default by indigents.

The key defect in the Tate case appears to have been the state's requirement for forthwith payment of the fine, which had the effect--when an indigent could not pay the fine immediately--of "automatically" converted the fine-only sentence to a jail sentence. The Court's opinion in Tate was careful to emphasize that the state had a variety of other alternatives to which it could constitutionally resort in order to serve its "concededly valid interest in enforcing payment of fines" (401 U.S. at 399).

In 1983, Bearden v. Georgia, ___ U.S. ___, 103 S. Ct. 2064 (1983), the Supreme Court again considered the problem of imprisoning indigents for non-payment of a fine, this time in the context of a case in which the defendant had pleaded guilty to burglary and theft by receiving stolen property. The trial judge, acting under a Georgia statute dealing with the sentencing of first offenders, did not enter a judgment of guilt, but instead deferred further proceeding and sentenced the defendant to three years on probation. As a condition of probation, the defendant was ordered to pay a \$500 fine and \$250 in restitution. The defendant borrowed the money to pay the first \$200, but thereafter lost his job and was unable to pay the \$550 balance when it became due four months after sentencing. The state then filed a petition to revoke the defendant's probation because of the non-payment. The trial judge, after holding a hearing on the petition, ordered the probation revoked and sentenced the defendant to serve the remainder of his three-year probationary period in prison. The Supreme Court reversed, in an opinion by Justice O'Connor which adopted a due process approach to the problem.

The Court's opinion in Bearden endorsed the earlier Equal Protection rulings in Williams and Tate, but focused explicitly on the process by which the decision to imprison the defendant for non-payment was made. At the hearing on the petition to revoke probation, the trial court had focused only on the fact that the defendant had disobeyed the order to pay the fine, without regard to whether he had made reasonable efforts to do so and without regard to whether alternatives other than imprisonment might be appropriate. The effect was, the Court said, to imprison the defendant solely because he lacked funds to pay the fine--the same practice condemned in Williams and Tate. The Court's opinion took care, however, to emphasize that the holding should not read as precluding a trial court from imprisoning an indigent for non-payment of a fine:

We do not suggest by our analysis of the present record that the State may not place the petitioner in prison. If, upon remand, the Georgia courts determine that the petitioner did not make sufficient bona fide efforts to pay his fine, or determine that alternative punishment is not adequate to meet the State's interest in punishment and deterrence, imprisonment would be a permissible sentence. Unless such determinations are made, however, fundamental fairness requires that the petitioner remain on probation.

One important effect of Bearden is to impose an important requirement not previously articulated by the Court: in a situation where an offender has failed to pay a fine, the trial court must at least consider alternative measures other than imprisonment. It may impose a prison sentence only if the alternative measures are deemed inadequate to protect the State's interest in punishment and deterrence.

In all three of these decisions, the Court has taken pains to make it clear that, as Justice White phrased it in a concurring opinion in Bearden, "poverty does not insulate those who break the law from punishment" (p.2074). Courts can impose fines on indigents, and if the individual does not pay the fine the court can impose sanctions for non-payment. Under the cases, however, there are some important limits on the range of sanctions that can be imposed and there are procedural requirements that must be met if imprisonment is to be used as a sanction. Thus, it is clear that when a defendant has been convicted and fined for an offense for which imprisonment is not a statutorily authorized sanction, a court may not imprison him for non-payment without--at a minimum--inquiring into the reasons for the non-payment and, if the default is not "willful," considering whether sanctions other than imprisonment will achieve the State's legitimate interest in punishment and deterrence. At the very least, a defendant in this situation must be given an opportunity to pay the fine over a period of time.⁹

If the underlying offense is one for which jail is an authorized punishment, as in Bearden, a trial judge has greater leeway to structure the sentence in ways that may encourage fine payment and facilitate enforcement. For example, as we have noted, the fine can be imposed in combination with a jail sentence which is either stated as an alternative or suspended on condition that the fine is paid. If the defendant

⁹It is not clear, from the cases, whether an indigent defendant can be jailed for default if he has tried but has been unable to pay the fine. The Tate decision explicitly left open the legality under the Constitution of imprisonment "as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means" (401 U.S. at 401). The Court in Tate left that determination to "await the presentation of a concrete case" (id.), and so far has not considered such a case.

has been given time to pay and has failed to do so, he can then be jailed. Here, the judge presumably makes a determination, at the time he imposes the original sentence, that imprisonment would be the most appropriate means of satisfying the State's interests in the event of non-payment of the fine. The Bearden ruling suggests, however, that even when a jail alternative is stated at the time the fine is originally imposed, the trial court may have to reconsider the appropriateness of this alternative (as well as the reasons for the non-payment) in an enforcement proceeding following default.

D. Enforcement Without Resort to Imprisonment

Typically in the United States, both in statute and in practice, imposition of a jail term for default tends to be a sentence alternative to the fine rather than a method to compel payment which leaves the fine still outstanding and subject to civil collection upon the defendant's release.¹⁰ Most states stipulate an "exchange rate" of a number of

¹⁰ This is not universally true. The "contempt of court" penalties that several state statutes provide for willful default leave the fine outstanding, although there may be no attempt to collect it after the contempt sentence has been served. For example, in New Jersey, some judges automatically vacate the fine judgments when imposing contempt sentences for nonpayment. Thus, in practice, serving time in jail seems to relieve the defendant of liability for his fine even in states where statutes are written in terms of compelling payment. There are also states (such as Florida, Kansas, and New Mexico) where serving time in prison for default does not discharge a fine obligation, but working at prison labor does have that effect.

dollars of a fine that will be excused for each day spent in jail for default. Even states that have no exchange rate usually limit, in some way, the amount of jail that may be imposed in lieu of a fine.¹¹ In practice, our observations suggest that jail terms for default are sometimes also imposed to run concurrently with jail terms for new offenses, or they are imposed retrospectively so that time already served in detention on a new arrest satisfies the fine default alternative. However, many judges express serious concern about imposing any jail alternative even when there is no constitutional impediment, including when they are faced with a willful defaulter. What are judges' enforcement options when they believe the threat of imprisonment to be either inappropriate or ineffective?

We have examined a variety of nonjail enforcement strategies already in place in some American and European courts which deserve discussion. These include work programs, seizure of property, attachment of earnings, and suspension of automobile licenses and registrations. In briefly discussing examples of each of these, it is important to note that much more needs to be known about how they operate and what their levels of success and cost are before they can be considered for widespread implementation. However, one theme appears continually whenever we have discussed these enforcement approaches with practitioners: as with incarceration, the threat of their imposition appears to have a substantial impact on the likelihood of fine payment. The "miracle of the cells" seems to have parallels in the "miracle of the marshals" and the "miracle of the attached pay check."

¹¹ See Tables A-3, -4 and -5 in Appendix A for relevant state statutory provisions.

Work Programs

Work programs, currently in favor as punishment options, may be a sensible method of enforcing fines by providing offenders with a chance to work off their obligation if they cannot pay (or if they would prefer to work it off). The work concept may take the form of "community service," where nonincarcerated offenders perform labor for public and nonprofit agencies. Of course, before the birth of modern community service concepts in England and their transfer to the United States, statutes in southern and northwestern states permitted labor (and "hard labor") sentences when inmates were incarcerated. A particularly archaic provision still on the books (but never used) in the state of Washington provides that if an offender defaults in payment of a fine to a municipality, "such person may be compelled on each day...except Sundays, to perform eight hours labor upon the streets, public buildings and grounds of such city and to wear an ordinary ball and chain while performing such labor" (Wash. Rev. Code Ann. §9.92.130). This type of language evokes images of involuntary servitude, chain gangs, and debtors' prisons. While notions of equity may be offended by requiring poor offenders to perform labor while the wealthier may pay a fine, there is a paucity of other alternatives for sanctioning offenders without sending them to jail. Even though work programs could be a relatively expensive sentence, jail is also costly and work is a reasonable alternative. And in fact, labor is perceived by many modern criminal justice professionals as potentially rehabilitative or, at least, a sensible commodity to exact from poor people as punishment for their offenses.

This perspective has influenced policy development most extensively in the state of Delaware. Delaware operates not only a community

service program for those originally sentenced to perform labor, but also a "work referral program" through which those originally sentenced to fines may work them off through unpaid jobs (where no money changes hands). In the language of Delaware's authorizing statute:

Where a person sentenced to pay a fine, costs or both, on conviction of a crime is unable or fails to pay such fine, costs or both, at the time of imposition of sentence or in accordance with the terms of payment set by the court, the court may order the person to report at any time to the Director of the Division of Corrections, Department of Health and Social Services, or a person designated by him, for work for a number and schedule of hours necessary to discharge the fine and costs imposed. For purposes of this section, the hourly rate shall be equal to the minimum wage for employees...established in accordance with the then-prevailing federal minimum wage, and shall be used in computing the amount credited to any person discharging fines and costs (Del. Code Ann. titl. 11, §4105(b)).

The Work Referral Program, within the Delaware Bureau of Adult Correction, has implemented the basic terms of this statute for the last seven years by placing fine nonpayers at jobs with community agencies where they are monitored by the agencies' own staffs.¹² The program appears to work smoothly and to be well thought of by court and probation personnel in Delaware, although the dependence on monitoring of the placements by outside agencies has resulted in some abuses. Cost considerations would, however, be salient in setting up a work program with its own supervisory structure.

A larger doubt is cast on the potential transferability of the concept by the program's scale, which is very small even for a state the size of Delaware. Between July and December of 1980, only 31 out of 745

¹² For a description of a similar program in Saskatchewan, Canada, see Heath (1979).

defendants fined in Delaware's Court of Common Pleas participated in the program and only a proportion of these completed it. And in a single month (March 1981), fewer than 100 people from all of Delaware completed the program. It is unknown whether a workable work program could be devised to handle defendants who were unable to pay fines in a large court system, but it is a concept that should be considered.¹³

Other work programs utilize cash transfers. In present-day Georgia half-way houses, prisoners work for cash to satisfy restitution obligations. Cash transfers are clearly most important when the recipient is a private individual rather than the state, but there is no reason why this model could not also be used for the satisfaction of fine judgments. For example, when prisoners' labor is hired out to private firms (the old chain gang idea), the firm pays the prison for this labor; prisons may use the money for their own expenses, or they may allow offenders to keep all or part of their earnings, or they may apply the income to satisfy the prisoners' monetary obligations. The statutes of the states vary widely in whether they permit (or require) this kind of labor to be credited to a prisoner's fine debt.

If legislators were interested, statutes could be changed to allow community service to be ordered in addition to a fine or as the primary sentence--to be suspended pending fine payment, but executed in

¹³ In fact, there may be places in the United States where work programs already operate as close substitutes for fines, if not as direct responses to fine default. Gillespie (1982) reports that in Peoria County, Illinois, approximately one-third of his sample of misdemeanor cases that received a court supervision sentence were sentenced to a public service employment (PSE) program. He suggests that "Fines and PSE sentences appear to be close substitutes in sentencing misdemeanors; both are used predominantly for theft and the distribution among other sentences is similar" (pp. 9-10). He suggests further that "The basis of the choice between the two sanctions appears to be made on the basis of economic status of the offender, i.e., their ability to pay a fine" (p. 11). Finally, he notes that such work options are enforced; the compliance rate for PSE sentences was 73 percent (*ibid.*).

the event of default.¹⁴ Even without legislative change, judges might ask defendants at the time of sentencing whether they could comply with a community service sentence, but not with a fine, and sentence accordingly. In states whose statutes provide for resentence--such as New York--judges could order community service after fine default had occurred. The inherent drawback to practices of these kinds is that richer defendants would be able to buy their way out of community service by paying their fines, but the poor would have no choice. However, if day fine systems for setting fine amounts (such as those discussed in Chapter II) were simultaneously introduced, the problem might be mitigated somewhat. We are particularly sensitive to the equal protection concerns that this use of community service might raise (especially without day fines); nevertheless, we think that it is important to recognize that using a jail sentence instead of a fine (because the latter cannot be enforced) probably has the effect of punishing the poor more severely.

Community service is seen by many court staffs as a highly desirable alternative to repeated time payment extensions granted poor defendants. Courts like the Trenton (New Jersey) Municipal Court are seeking legislative authorization to begin such programs. However, legislatures may see this approach as too costly in a period of fiscal retrenchment. It would be a monumental (and expensive) task to implement a community service program large enough to handle all fined offenders who default in payment, but perhaps it would not be too difficult

¹⁴ It might also be necessary for a legislature to designate community service as a sentence option distinct from probation or conditional discharge.

to provide a program for some of them, if other methods of encouraging payment were also in place and successful.

In Britain there is concern that existing community service supervisory resources would be greatly strained by an influx of defaulters working for a short term to pay off their fines (West, 1978). There is also some belief that this enforcement mechanism may be too benign, and without the power of a jail threat to deter default. Given these reservations, magistrates' courts in England have made little use of their power to make community service orders in the event of fine default. It is interesting that as early as the late 19th Century, German proposals for reform of the fining system included a suggestion to replace imprisonment for default by a type of community work order. However, it seems that the idea has eluded translation into practice in that system as well as in the English one. And it is perhaps ironic that, even in the case of community service, the threat of jail is still the coercive element that enforces the sanction.

Distress Proceedings

Writers with a reformist bent generally recommend enforcement of fines through civil mechanisms. Their images of civil process suggest gentler treatment, less intimidating than criminal handling. Yet the backbone of civil remedy, distress seizure and sale of real or personal property, can result in real economic deprivation, and this collection process can be abused.

Nevertheless, the threat of distress is clearly an option for enforcing fines without recourse to jailing. Nine states have statutes that authorize the sale of goods belonging to an offender who has an unpaid fine balance. As in England, Maine statutes term this process

"distress," and the clerk of court is empowered to issue a "warrant of distress" authorizing a sheriff to proceed with seizure and sale (ME. REV. STAT. ANN. tit. 15, §1942).¹⁵

While the statutes of many states permit property to be seized and sold, there appears to be little current use of this enforcement option in the United States. Court administrators often feel it is too much trouble to recover small fines in this manner, and some claim their typical defendant has no property. Yet many households, even those on welfare, have a television set which could be distrained and auctioned (or held as collateral pending full payment of the fine).

European courts use distress somewhat more frequently. In Sweden it is commonly employed in the case of willful defaulters, and authorities claim that, because of its vigorous application, fines are nearly always paid eventually. Some English courts also practice distress by hiring private bailiffs to conduct property seizures and sales. The practice appears to be concentrated in areas where offenders can be expected to have goods worth "distraining." (British humor is reflected in the popular tale of the distraining (by a Bow Street magistrate) of a political protester's dining room table when he had expected to serve jail time as a martyr for nonpayment of his fine.) Of the two British courts studied recently by Vera's London Office, a provincial court (located in a small middle-class community) was regularly authorizing

¹⁵ In Massachusetts, "distress" process may be used to compel fine payment by a corporation, but not an individual (MASS. GEN. LAWS ch. 279, §42 (Michie/Law. Co-op)). South Carolina statutes stipulate that sale of property should be attempted before jailing a fine defaulter and that the property should be sold "in the same manner as property is sold under execution in civil cases..." (S.C. CODE §17:25-330). See also: NEB. REV. STAT. §29-2404; N.H. REV. STAT. ANN. §618.13; N.Y. JUDICIARY LAW §792 (McKinney); VT. STAT. ANN. tit. 13, §7173; OHIO REV. CODE ANN. §2949.09 (Page); WASH. REV. CODE §10.82.030.

distress procedures against its defaulters, and the urban court (in a more impoverished area) was also beginning to experiment with the use of distress as a new enforcement option.¹⁶

The basis for this interest in expanding distress even with relatively poor defaulters is the notion that, while most defaulters have few valuables worth distraining, "everyone has something he doesn't want to lose, even if no one else wants it." While distress is actually used relatively infrequently, it can be threatened to secure payment of the fine. The civil bailiffs who collect fines for the provincial court studied by Vera's London Office use the threat of distress to obtain eleventh hour payment of the fine. Our data indicate they were successful in getting full payment in 38 percent of the cases and partial payment in another 10 percent. Although the bailiffs do not account to the court whether the funds they forward have been obtained by actual seizure and public auction of goods, or in cash from the offender under threat of distress, Vera's London Office estimates that in perhaps as

¹⁶ In England, distress tends to be carried out in criminal cases by civilian bailiffs, under a contract with the court, rather than by the court or by sheriffs. Some courts apply distress selectively by issuing warrants to bailiffs only in cases in which the court believes there are goods to be distrained. Other courts, however, issue distress warrants across the board and bailiffs pursue them selectively, knowing which addresses hold no possible hope of success. In recent years, distress has been on the increase in the English system. This may be partly due to the political climate (a preoccupation with increasing funds during a time of recession), and some part of the increase must be attributed to active soliciting for business by civilian bailiffs.

many as nine out of ten cases, the threat of distress has been sufficient to secure fine payment.

There are a variety of practical problems that the actual implementation of distress proceedings can present other than offenders' lack of goods. If private collection agencies are used to collect fines through civil means, including distress, these collectors can use heavy-handed techniques without the courts being aware of it unless a citizen complains. In New York City, the Parking Violations Bureau has found using private collectors satisfactory despite some of these problems, but they do follow through on any citizen's complaint about abuse. In Phoenix, Arizona, on the other hand, the use of private collectors has not proved particularly successful, but civil collection proceedings by the City Treasurer's Office have; the only major problem appears to be supplying that office with sufficient information on defaulters to assure they can be found.

Probably the most frequent use of distress in criminal cases in the United States is in the federal system; executions against the property of the offender appear to be made regularly, although no statistics are available. However, they are not preferred methods of fine enforcement; they entail many problems because these cases often involve white collar crimes and fairly high fines to be paid by the offender. In such cases, the major problem is the discovery of assets (particularly liquid assets but also real property). Depositions about financial condition can be, and in major cases often are, taken under oath by a U.S. Attorney with a reporter present. But offenders often invoke their fifth amendment privilege and refuse to answer. Other cases involve untangling clever financial concealments, tracking down

offenders who disappear, and finding out after considerable investigation that offenders have dissipated their assets or declared bankruptcy. As a consequence, when a federal criminal code reform bill (S 1) was introduced early in 1975, one of its many provisions provided for Internal Revenue Service methods for the recovery of federal criminal fines through summary collection procedures. The bill treats criminal fine judgments as tax liens for collection purposes and makes federal tax code provisions applicable to fine collection. This and subsequent bills providing for this collection mechanism did not provide for jailing of willful defaulters, clearly expecting that the lien on real property provision would put teeth into fine sentences and be more likely than the threat of jail to effect compliance.

Garnishment of Wages

Another civil enforcement mechanism, attachment of earnings, appears to be an option available in almost every court system, here and abroad. However, nowhere in the United States or Europe does it seem to be used regularly for the enforcement of fine sentences. Courts seem especially sensitive to the possibility that an offender will lose his job because his employer does not want to go to the trouble of withholding and forwarding earnings. In England, courts also tend to feel that this proceeding places the burden on the wrong party--the employer and not the offender--especially if the fine amount is small. Thus, warnings are always given to the offender before wage garnishment proceeds, and when it is undertaken it seems to be with considerable ambivalence.

There are also other practical concerns; garnisheeing wages can be frustrating to the court. When defendants have employment, their salaries tend to be low and they do not necessarily remain at the same jobs. At a state's maximum allowable percentage for garnishment (e.g., 10% in New York State), many weeks' salary may need to be attached to satisfy a substantial fine judgment. Even in the federal system, where the fines are most likely to be large enough to justify the effort, garnishment is used only occasionally. Garnishment actions in federal cases, as with property executions, must proceed through the courts of the state in which the federal district is located, and these laws often mandate cumbersome procedures, such as filing separate petitions for each check from which wages are to be withheld.

Driver's License and Registration Suspensions

Driver's licenses are often suspended pending the payment of fines, but only in motor vehicle cases, and usually only in cases of moving violations where the officer writing the summons has seen and recorded information from the offender's driving license. In the case of parking offenses, only the automobile registration number is known from the license tag or plate, and in no state that we know of are license and registration files cross-referenced at present.

The license suspension also seems to be restricted to motor vehicle offenses by both law and administrative guidelines. To our knowledge this method of enforcement has not been used (or seriously contemplated) for fines imposed for non-traffic offenses. City attorneys in Milwaukee, Wisconsin, visited in the course of this research, predicted that the courts were likely to reject such use as a

violation of due process. We could also imagine an argument that equal protection was violated, on the theory that many criminal (non-traffic) offenders would be nondrivers who would be denied this relatively lenient type of enforcement.¹⁷

E. Alternative Ways of Treating the Poor Defendant

In much of this chapter, we have suggested that fine enforcement may not be as insurmountable an obstacle to the use of fines as criminal sanctions as many have thought, although, admittedly, we need to know more about this process.¹⁸ Despite legitimate and widespread concern about offenders' resources, not all offenders are totally indigent, although many are poor. As in Phoenix and some parts of Georgia, various individuals involved in the fining process (probation officers, court clerks, or special fines collection personnel) may be able to assist some of these offenders in ways that will help them meet their fine payments in installments. Whether the fined offender is affluent or poor, however, being diligent about keeping in contact with those who owe, notifying them that payments are due, and making them aware that the court recognizes when they are in arrears and is prepared to use

¹⁷ While this method of enforcing fine payments may not be applicable to the types of cases in which we are particularly interested, it is important to note that the procedures appear to be effective in some places, for example, in New York City's Parking Violations Bureau. Although it is not yet clear what Milwaukee's experience will be with this procedure, it is interesting that in both New York and Milwaukee, their good results tend to be secured from letters that warn of impending action against an auto registration and not simply from its execution. Once again, therefore, the meaningful threat of enforcement seems to be the most important part of the process, and this has positive implications for the overall cost of enforcement activities.

¹⁸ It is hoped that the study of fine enforcement methods used by several English magistrates courts underway in Vera's London Office will provide some of this much needed information. Funded by the National Institute of Justice, its report is expected in 1984.

more forceful means to obtain their compliance, may be the most successful methods of enforcing this sentence. Although the threat of incarceration, distress, community service, or other work requirements seem to be the most appropriate methods of backing up enforcement efforts, their actual imposition may be needed relatively infrequently, even with poor offenders, if enforcement agents routinely take appropriate (and relatively inexpensive) actions to make offenders aware that their obligations to the court are to be taken seriously.

With poor offenders, there are also several ways to vary the use of fines that avoid, at least for a time, some of the problems associated with enforcement. One is to order but suspend a fine, the suspension to be conditional on a period of good behavior (i.e., no new convictions). In this way, no money need be produced unless the offender is re-convicted, in which case he may be sent to jail on the new offense in any event. In Britain, the Justices' Clerks' Society has suggested the use of suspended fines, payable only if another offense is committed during a fixed period of time. As yet, the concept has not been tried out.

Another approach is a "bind over to keep the peace." As used in England and elsewhere, a peace bond provides another way to avoid economic deprivation and enforcement problems in fining poor defendants. And, like the suspended fine concept, it may help to deter criminal behavior through the threat of financial penalty. The offender, or someone on his behalf, either provides a surety of a certain amount or posts a deposit with the court which may later be redeemed if the offender has "kept the peace" (for example, has not been rearrested). Otherwise, the deposit is forfeited. To date, this has nowhere substituted

for a criminal sentence. In England, binding over an individual to keep the peace is mainly confined to offenses against the public order (e.g., disorderly conduct, brawls in neighborhoods, etc.). But such use holds promise. Especially if a family member has provided a surety or posted bond for the offender (as might a parent in the case of a defendant who was "indigent-because-young"), this device might strengthen informal social control over criminal conduct. Most significantly, if a bond is used, it would avoid the problem of enforcing a fine because the forfeiture would be automatic, and would presumably be minimally depriving to poor defendants and their families because of modest bond charges.

Finally, token fines, that is fines set at very low amounts (e.g., \$5-\$20), could themselves be levied on people with minimal resources who have committed misdemeanors usually fined in the \$50 to \$250 range. Particularly if imposed as part of a day fine system, as in Germany, this idea is appealing because fines often seem to be used for their symbolic punishment value, so that defendants know they have not simply "walked" (i.e., gotten off with a discharge). It is possible that even a "laughably small" fine, due immediately or almost so, might engender more respect for the court than a discharge or a larger fine that is difficult to enforce.

Clearly the extent and nature of the problems facing a court in fine enforcement are primarily generated in earlier stages of the sentencing process: in the appropriateness of the initial choice of a fine as the sanction; in the courts' awareness in setting the fine of an offender's ability to pay a particular amount; in the judge's instructions to the defendant about the conditions of his payment and his obligation to meet them in a timely fashion; and in the way the court

monitors payments and signals the offender as to its intentions when they are not forthcoming. Data presented in the preceeding chapter suggest that some, and perhaps many, courts here and abroad are relatively successful at collecting fines, despite (in the case of the United States) some serious misperceptions as to the constitutional limitations on fine use and enforcement strategies with offenders who are poor. Thus, the extent to which enforcement issues, including imprisonment for default, are likely to become insurmountable problems should a jurisdiction attempt to improve or expand its use of fines as criminal sentences would appear to depend largely upon how it structures each stage in the entire fining process.

CHAPTER V
FACTORS AFFECTING FINE USE

In this report we have looked at some of the central descriptive findings from our examination of how fines are used as criminal sanctions in American courts, adding when we could information on similar and contrasting patterns in Western Europe. Our data, though uneven, suggest that many courts in the United States depend heavily upon fines in sentencing defendants under a wide variety of criminal offense categories, including some that are generally considered quite serious. Nationally, however, practices appear to vary quite considerably across different types of courts, particularly limited jurisdiction courts on the one hand and general jurisdiction felony courts on the other. Furthermore, even within these broad categories, we find considerable variation among individual courts in their reliance upon fines as criminal sentences, only some of which appear to reflect regional differences in sentencing practices.

What then are the factors associated with courts' differing utilization of fine sentences? The limitations of our exploratory study do not permit us to answer this question with the systematic quantitative attention it deserves, but the extensive qualitative data collected in the course of the study provide a basis for some observations. We have divided our discussion of these factors into three categories: statutory policies; structural factors; and attitudes, that is, views about the use of fines. Obviously, the factors we discuss are interrelated; but the degree of importance each has and its relationship

to the others is a matter for future empirical research emphasizing multi-jurisdictional studies of overall sentencing practices--especially at the lower court level.

A. Statutory Policies Toward Fine Use

Statutes dealing with fines and other types of criminal sanctions can affect fine utilization practices in several ways. First, a state's statutory scheme can either include or exclude the fine as an authorized sanction for a particular type of offense. Second, even if a fine is authorized for an offense, there may be a statutory ceiling on the amount that can be imposed. Third, a state's statutes may authorize a range of different types of economic sanctions for a convicted defendant, some of which may be accorded higher priority with respect to imposition and/or collection. Thus, for example, there are some states that authorize sanctions closely related to fines, especially court costs, restitution, and "penalty assessments." From the defendant's perspective, one major effect of all these sanctions is the same: he has to pay a sum of money to the court or some other government agency. From the perspective of court officials, the collection and enforcement problems are essentially the same, too. However, the social purposes thought to be served by these sanctions are different, and in some jurisdictions a statutory preference for other monetary sanctions may mitigate against broad utilization of the fine or limit the size of the fine.

Based upon our survey of state statutes, it can be concluded that legal authority to use fine sentences is quite broad in this country (Sichel, Working Paper #1, 1972). In order to help develop a sense of

the differing statutory frameworks within which fines are used across the country, we examined the extent to which statutes in the fifty states and the District of Columbia authorize imposition of a fine sentence as a penalty for twenty-two selected offenses that cover a broad range of common criminal conduct. Table V-1 shows these offenses and indicates the number of states in which a fine is an authorized penalty for each offense--either as a sole penalty or in combination with another penalty or penalties. Most misdemeanor offenses are finable in all states without the addition of another penalty; however, sentence alternatives as substitutes or supplements to fines are also authorized for almost all misdemeanors in almost all jurisdictions.¹

The majority of the states authorize fines for felony offenses as well. However, the use of the fine as the sole sentence for the more serious offenses in Table V-1 is prohibited by some state statutes. Table V-2 shows these and other statutory restrictions on fine-alone sentences. In New Mexico, Ohio, Virginia, and Colorado, fines for felonies may only accompany imprisonment sentences (although presumably the imprisonment portion of the sentence could be suspended). In Illinois and Kentucky, a felony offender can be sentenced to a fine with probation or conditional discharge, as well as with imprisonment.² The

¹ While we are concentrating on typical criminal sanctions in this discussion, it is worth noting that violations of ordinances, including traffic cases, are invariably punishable by stand-alone fines; furthermore, for these offenses there are rarely sentencing alternatives to the fine permitted by law.

² It is possible, as we noted in the last chapter, that the combination of fines with probation in the case of felony convictions is designed to aid enforcement. Twenty-eight states permit the payment of a fine to be made a condition of a probation sentence with revocation of probation (and thus jailing) a legal possibility in the event of nonpayment.

offense of armed robbery, for example, surveyed in our review of the statutes, could receive a fine-alone sentence in only fifteen out of the fifty-one states. Even for less serious felonies, recidivists in twenty-nine states are barred, as part of "habitual offender" laws added to many state laws in recent years, from receiving fine-alone sentences. And in New Mexico, those who commit crimes against the elderly are also barred from receiving a fine as the sole penalty.

TABLE V-1
Statutory Authority to Impose a
Fine for Selected Offenses

| Offense | Fine authorized as a sole penalty and in combination | | Fine authorized only in combina- tion with other penalty(ies) | | Fine not authorized | |
|---|--|-----------------|--|-----------------|------------------------|-----------------|
| | No. of States | % of States* | No. of States | % of States* | No. of States | % of States* |
| 1. Murder (with intent) | 4 | 7.8 | 9 | 17.6 | 38 | 74.5 |
| 2. Armed robbery | 15 | 29.4 | 11 | 21.6 | 25 | 49.0 |
| 3. Rape (without serious physical injury) | 18 | 35.3 | 8 | 15.7 | 25 | 49.0 |
| 4. Purse snatch | 25 | 49.0 | 7 | 13.7 | 19 | 37.3 |
| 5. Burglary of residence | 31 | 60.8 | 9 | 17.6 | 11 | 21.6 |
| 6. Embezzlement of funds | 34 | 66.7 | 11 | 21.6 | 6 | 11.8 |
| 7. Automobile theft | 38 | 74.5 | 9 | 17.6 | 4 | 7.8 |
| 8. Possession of heroin | 38 | 74.5 | 8 | 15.7 | 5 | 9.8 |
| 9. Criminally negligent homicide | 38 | 74.5 | 7 | 13.7 | 6 | 11.8 |
| 10. Pimping | 40 | 78.4 | 6 | 11.8 | 5 | 9.8 |
| 11. Confidence swindle/theft by deception | 41 | 80.4 | 6 | 11.8 | 4 | 7.8 |
| 12. Sale of marijuana (small amount) | 42 | 82.4 | 5 | 9.8 | 4 | 7.8 |
| 13. Driving while intoxicated (2nd off.) | 42 | 82.4 | 5 | 9.8 | 4 | 7.8 |
| 14. Carrying concealed unlicensed handgun | 45 | 88.2 | 2 | 3.9 | 4 | 7.8 |
| 15. Criminal mischief | 46 | 90.2 | 1 | 2.0 | 4 | 7.8 |

continued...

TABLE V-1 (continued)

| Offense | Fine authorized as a sole penalty and in combination | | Fine authorized only in combina- tion with other penalty(ies) | | Fine not authorized | |
|--|--|-----------------|--|-----------------|------------------------|-----------------|
| | No. of States | % of States* | No. of States | % of States* | No. of States | % of States* |
| 16. Driving while intoxicated (1st off.) | 47 | 92.2 | 3 | 5.9 | 1 | 2.0 |
| 17. Petit Larceny | 48 | 94.1 | 1 | 2.0 | 2 | 3.9 |
| 18. Prostitution | 49 | 96.1 | 1 | 2.0 | 1 | 2.0 |
| 19. Simple battery | 49 | 96.1 | 1 | 2.0 | 1 | 2.0 |
| 20. Reckless driving | 49 | 100.0** | 0 | -- | 0 | -- |
| 21. Criminal Trespass | 51 | 100.0 | 0 | -- | 0 | -- |
| 22. Disorderly conduct/breach of the peace | 51 | 100.0 | 0 | -- | 0 | -- |

* Base includes District of Columbia; N=51.

** Not covered by statute in Mo. or Nev.

TABLE V-2

Statutory Restrictions on Fine-Along Sentences for
Felony Convictions

| <u>Restricted Categories</u> | <u>States Whose Statutes Restrict</u> | |
|------------------------------|---------------------------------------|-----------------|
| | <u>Number</u> | <u>Percent*</u> |
| All felonies | 6 | 11.8 |
| Violent felonies | 16 | 31.4 |
| Felonies committed with gun | 12 | 23.5 |
| Habitual felony offenders | 29 | 56.9 |
| Felonies against elderly | 1 | 2.0 |

*Base includes District of Columbia; N=51.

While fines are thus apparently considered an appropriate penalty for many types of serious offenses, these statutory restrictions suggest that state legislatures differ in the extent to which they consider the fine by itself to be a suitably severe sentence for the more serious (and more politically sensitive) offenses and offenders. However, in states where there is statutory insistence that fines be imposed in connection with other penalties for such offenses, these additions may have primarily symbolic value--to demonstrate that the state's legislature has viewed an offense as serious enough to merit society's retribution--and in practice the fine may be the only nonsuspended penalty. Nevertheless, our telephone survey data provide some evidence that statutory differences do affect actual sentencing practices, especially at the felony level.

Based upon the results of our statutory analysis (as presented in Table V-1), we established three categories of states: those that authorize a fine alone sentence for many offenses (with the cut-off set, somewhat arbitrarily, at 19 of the 22 offenses surveyed); those that authorize it for most offenses (15-18 of those surveyed); and those that authorize it for some (14 or fewer of those surveyed). States that authorize stand-alone fines for a relatively large number of offenses may be labeled "Extensive Fine Use Policy States;" those that authorize stand-alone fines for relatively few offenses may be characterized as "Limited Fine Use Policy States." Among the twenty-one states covered in the telephone survey, seventeen fell into these two polar categories, as follows:

Limited Fine Use Policy States

California
Ohio
Oklahoma
Tennessee
Wyoming
Colorado
Georgia
Virginia

Extensive Fine Use Policy States

Arizona
New Jersey
Wisconsin
Alabama
Arkansas
Connecticut
Iowa
Florida
Minnesota

As seen in Table V-3, data from our telephone survey provide some support for the notion that overall statutory frameworks affect the utilization of fines. In general jurisdiction courts that deal with felonies only, five of the eight courts in states that authorize broad use of fines report using them in half or more of their cases, while only three of eleven such courts in limited fine use policy states report using them in half or more cases. In contrast, there appears to be little or no difference in practice between the two categories of states at the limited jurisdiction court level. This accords with what one would expect: all states authorize fines widely for relatively non-serious offenses; differences in legislative policy tend to emerge at the felony level, as offenses become more serious, and it is here that differences in legislation appear to most influence sentencing practices.³

Another way in which statutory provisions affect the use of fines is through their treatment of other monetary penalties, especially restitution, court costs, and, more recently, penalty assessments.

³ Further analysis suggests that states which authorize fines for many felonies also tend to set high dollar maxima for these fines (see Table A-6 in Appendix A). Clearly, state legislatures have sometimes considered large fines (but not small ones) to be suitable substitutes for prison sentences, and to satisfy public demand for retribution for certain crimes.

Several of the recent model penal codes have suggested the primacy of restitution. For example, the American Bar Association's Standards Relating to Sentencing Alternatives and Procedures (1978) calls for courts to consider before imposing a fine "the extent to which payment of a fine will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim of the crime." And, in fact, nine states do have caveats in their statutes about fine obligations not preventing an offender from being able to afford monetary restitution.⁴ Framers of statutes for Arizona and Washington have gone beyond such sentencing cautions to include provisions authorizing judges to order that all or part of a fine be paid as restitution to the victim of the crime. And, various bills to revise the

⁴ Arizona, Hawaii, Illinois, Kentucky, Missouri, New Jersey, North Dakota, Ohio, and Pennsylvania (see Sichel, Working Paper #1, 1982:11).

TABLE V-3

Extent of Fine Utilization Reported in States with Statutory Policies Favoring/Limiting Extensive Fine Use, by Type of Court

| <u>Extent of Fine Utilization Reported</u> | | | | | | |
|--|----------------------------------|---------------|---------------|--------|-------|-------|
| Type of Court | All or Virtually All Cases | Most Cases | About Half | Seldom | Never | Total |
| <u>General Jurisdiction: Felonies only</u> | | | | | | |
| (a) Policy Limiting Use | 0 | 2 | 1 | 7 | 1 | 11 |
| (b) Policy Favoring Use | 0 | 2 | 3 | 3 | 0 | 8 |
| <u>General Jurisdiction: Fel., Misd., and Ord. Viol.</u> | | | | | | |
| (a) Policy Limiting Use | 1 | 3 | 1 | 1 | 0 | 6 |
| (b) Policy Favoring Use | 0 | 8 | 2 | 5 | 0 | 15 |
| <u>Limited Jurisdiction</u> | | | | | | |
| (a) Policy Limiting Use | 9 | 15 | 6 | 4 | 0 | 23 |
| (b) Policy Favoring Use | 10 | 16 | 4 | 1 | 0 | 14 |

Source: Telephone Survey

federal criminal code proposed to the 96th and 97th Congresses incorporated provisions for restitution sentences with no upper dollar limit and for defendants who make voluntary restitution to be excused from paying a fine up to that amount.⁵

While not all state statutes explicitly place a priority on restitution (and two, Maine and Massachusetts, explicitly assert the primacy of the fine over restitution), it is apparent that the temper of the times is with victims, and that legislatures are, and probably will continue to be, increasingly sensitive to the political advantages to be gained from advocacy of restitution over fines. As reflected in a recent New York Times editorial, the public appears to believe that the sentencing process should focus on its self-interest, whether that is being protected from violent street crime or being recompensed for suffering; punishing the offender through levying a fine is conspicuously absent:

Crime control and public safety would be better served by imprisoning dangerous offenders and sentencing the others to make restitution, or to perform community service (April 8, 1981).

⁵ In some states restitution may be used either in lieu of a fine or in addition to a fine when fine amounts provided by statutes are particularly low. In Chapter II (footnote 27), we discussed the differing fine amounts provided by statute for a hypothetical embezzlement offense of \$6,000; it is possible that in the seventeen states which do not authorize fine amounts equal to the amount of the offender's gain from this crime, that judges would either use restitution in lieu of a fine or in addition to it, in order to raise the penalty to the level of gain, particularly if the money was not recovered. But this cannot be readily ascertained from the state statutes themselves (except for Maryland, a low-fine state, where restitution is mandatory for this type of offense).

Other statutory provisions may also encourage fines to be given low priority in some courts, particularly statutes which reflect the desire of the state to recover the expenses of prosecution from the convicted offender. Thirty-one states permit the levying of court costs on all offenders, and courts have ruled that such costs do not constitute part of the crime penalty (Sichel, Working Paper #1, 1982:17). In states where authorized costs are in fact levied routinely, this statutory emphasis may mitigate against either the wide use of fines as penalties or against the use of high fine amounts. In the eleven states whose statutes provide only for levying cost-like surcharges on fine sentences, however, the statutes may encourage the use of fines, but possibly in lower amounts than if no surcharge were to be collected.⁶

Similar questions arise concerning the impact on fine use and fine amounts of relatively recent state laws providing for "penalty assessments," which some observers regard as simply a new name for the fine. Seven states (most recently, New York) provide for such monetary assessments to be levied on at least some categories of convicted offenders, in addition to whatever other penalty is imposed. In all these states (except New York), the revenue from these penalty assessments goes to victim compensation, which is consistent with the stress on restitution in other recent statutory additions. Again, these authori-

⁶ In some states, surcharges go directly to the court (Virginia) or into the state's general revenue fund (Massachusetts); in other states, surcharges provide revenue for specific state or local functions including, for example, victim compensation funds (Delaware and Florida), law enforcement training (Wisconsin, Connecticut, and Oregon); alcohol and drug programs (Arizona and Mississippi), highway safety programs and driver education (Hawaii and Arkansas). We will address below the question of whether the state or locality's interest in generating revenue affects the use of fine sentences.

zations may have an effect on the use, amount (and possibly even the enforcement) of fines, but further research is needed to be certain.⁷

A final comment must be made about the impact on the use of fine sentences of state statutes and case law concerning indigents. We have already discussed at some length in the last chapter the current status of constitutional limitations on the use and enforcement of fines: there appears to be no constitutional impediment to the use of a fine sentence with indigents, and there are only relatively limited constitutional restrictions on the use of imprisonment as an enforcement device with such offenders. However, we have also found that many of the judges and other court-related personnel we interviewed around the country believe the constitutional restrictions to be much greater than they apparently are. Hence, the impact of Supreme Court decisions in this area may be far greater than their formal provisions would indicate. Furthermore, many states have included in their statutes provisions specifically designed to limit the use of fines with poor

⁷ New York City would provide an interesting opportunity to examine this issue because the data collected in the course of the present study provide a baseline on the extent of fine use, fine amounts and collection rates in the City's misdemeanor court. Penalty assessments were not added to the state's statutes until mid-1982, after completion of our data collection, and are mandatory. It would be useful to know whether the provision for a mandatory assessment of \$40 on all misdemeanor convictions in New York State has affected the proportion of New York City Criminal Court cases sentenced to a fine alone (31% in the Vera sample), or whether it has affected the average amount of those fines (most frequently \$50). Because the law provides no new enforcement mechanisms, does not indicate the penalty for default, and is silent on the question of whether indigents are exempted from payment, there is also no way at the present time to predict whether its implementation is affecting this court's relatively high success rate in fine collections (two-thirds of all offenders and three-quarters of all dollars in the Vera sample).

offenders; in some instances, these statutes are more limiting than are the constitutional interpretations offered to date by the Supreme Court.⁸ Recalling, however, that statutory definitions of who is to be considered "indigent" for purposes of fining are often non-existent or highly discretionary (Chapter II, Section F), it is not clear how these statutory provisions affect the actual use of fine sentences in different courts within these states.

B. Structural Factors

There are many characteristics of court systems and local communities that may affect the extent to which different sentences provided by statute are utilized. In this section, we shall look at those structural factors which seem particularly relevant to courts' reliance on fines.

Types of Offenses Before the Court

Our telephone survey of jurisdictions around the country suggests that a major factor affecting the extent of fine use is the particular mix of cases that typically comes before a court. This impression is supported by the paper by Ragona and his colleagues (1981). Using discriminant function analysis, they found that the type of offense is the most important factor influencing sentence choice in two of the three courts they studied and that the type of offense, in combination

⁸ For example, nine states absolutely prohibit the jailing of indigents solely for nonpayment of fines (Alaska, Colorado, Florida, Illinois, Kansas, Maine, Mississippi, Nebraska, and North Dakota). In addition, five states' statutes discourage fine sentences when they are likely to cause hardship to the offender or his dependents (California, Florida, North Dakota, Ohio, and Oregon), and eight states prohibit fine sentences when the offender is unlikely to have money to pay the fine (California, Florida, Hawaii, Maine, New Jersey, Ohio, Oregon, and Pennsylvania). (See Table A-5 in Appendix A below and Sichel, Working Paper #1, 1982:43.)

with several case processing variables, is the most important factor in the third court as well.⁹ Generally, what their data show is that in the traffic cases handled by all three misdemeanor courts, including quite serious DWI cases, the sentencing choice is between a fine combined with probation or a fine combined with a short jail term. In contrast, however, in other types of criminal cases (often theft-related offenses), the major choice is between a probation sentence or a jail term; the fine does not tend to be an option.

Social Class of the Offender Population

Ragona et al. suggest that one likely interpretation of these findings is that the type of offense should be viewed as a rough surrogate for the social class of the offender--with traffic and DWI offenders largely drawn from middle class and student populations, and other criminal offenders from lower social groups. Thus, the choice of sanction, particularly between a monetary and non-monetary penalty, probably reflects perceived and real differences in the economic resources of offender groups. "The point is that there may be significant class overtones to the enforcement of minor offenses, and therefore indirectly to the sanctioning of defendants in the communities we are studying" (p. 21).

⁹ It is interesting that it was only in the third court that Ragona et al. found the sentencing patterns among judges to be significantly different, reflecting systematic variation in judicial philosophy about the appropriateness of different sanctions. In the other two misdemeanor courts, there was no such effect. The authors conclude: "Individualized justice, to suit the individual judge and defendant, appears far less common in misdemeanor courts than either general studies of criminal justice discretion or previous research on misdemeanor courts might suggest" (1971:20).

Yet, as we have indicated elsewhere in this report, there are many lower court systems in which poor defendant populations are routinely fined. In New York City, for example, the fine tends to be the sentence of choice in non-traffic misdemeanor offenses; the situation is similar in New Haven. In these misdemeanor courts, fines would appear to be an important dispositional device because they can be applied in a fairly systematic and predictable manner, using a "tariff" system that takes into account the general poverty of the court's clientele and the level of offense severity. This approach serves the function of expeditiously disposing of the court's caseload of relatively minor offenses with some form of real punishment short of incarceration.

Size of the Caseload

These somewhat different patterns suggest that the implications for sentencing of the social characteristics of an offender population are influenced by other structural factors, including the size of the court's caseload and the range of available sanctions.¹⁰ It is likely that when the range of sanctions is confined to jail, probation, and fines, fines will be used more frequently, especially if jails are over-crowded and probation caseloads are heavy. However, if the range

¹⁰ While this is probably true for misdemeanor courts, it may be less so in upper level courts. When the offenses for which defendants are being sentenced are relatively more serious than those typically handled in lower courts, probation and jail or prison are likely to be the major sentencing choices. According to our interviews with felony court judges, one important reason that fines are not typically considered is that the poverty of the offender population is thought to prohibit sufficiently large fines. Even here, however, there may be regional differences in practice, as in the south in general and in Georgia in particular (see Chapter II), and in jurisdictions concerned with jail over-crowding. In our telephone survey of court clerks, several of those from felony courts reporting relatively extensive use of fines mentioned that fines had an advantage as a penalty because they did not add to the strain on already stressed custodial resources.

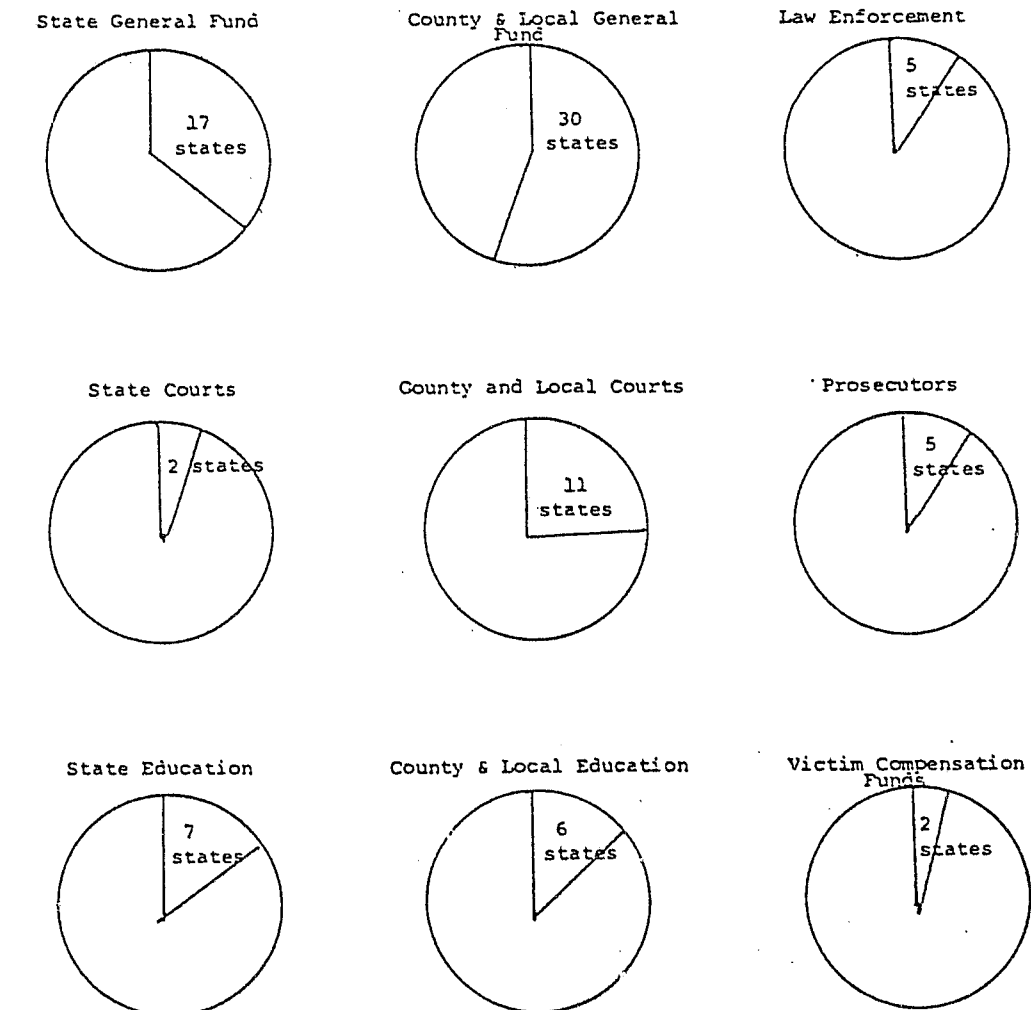
of sentencing alternatives is broader (including, for example, community service, restitution, treatment programs, diversion, etc.), there may be less dependency on fines even when court caseloads are heavy.

Allocation of Revenue from Fines

In the case of fines and similar levies, revenue dollars as well as punishment objectives may be a factor in the extent of their use. Although there is widespread agreement that the economic efficiency of a penal sanction should not be the primary reason for its use, it is equally clear from our interviews that economic concerns have occupied law-makers and judges; revenue was also frequently mentioned as an advantage of fines in our telephone survey of court clerks and administrators. "[A]s with any governmental body, the structural characteristics and decisions of the court are partly the result of financial considerations. The question, 'How much should we charge for justice?' is becoming a popular one....It is also an important one in misdemeanor courts which... use fines or fines in combination with other sanctions as the prevalent mode of punishment" (Ragona, et al., 1981:21-22).

Figure V-1 summarizes the provisions of state statutes relating to who shall make use of the revenues collected from non-traffic state fines. Although fines paid for the violation of state laws are commonly put into the state's general fund, localities, particularly cities and counties, also frequently share in the revenue from fines for offenses against state laws; in fact, they are the largest single recipient of state (as well as local) fine revenue. Courts themselves are sometimes the direct recipients of fine revenues, as in South Carolina where three-quarters of all fines go to the counties, but one-quarter goes "to the state for use in deferring the costs of the unified court system"

Figure V-1
Disbursement of Nontraffic State Fine Revenue
by United States State Statutes*



*District of Columbia included as a state; N=51.
Source: Review of State Statutes; see Sichel, Working Paper #1, 1982.

(S.C. CODE §14-21-490). The reliance of courts, especially local courts, on fine revenues is also illustrated by a Kentucky statutory provision, enacted in 1976, returning equivalent state funds to counties and cities where local revenue-generating courts had been discontinued (KY. REV. STAT. §24 A. 190-192).¹¹

¹¹ There are several constitutional issues involving the distribution of fine revenues, particularly when they directly benefit judges or courts. The United States Supreme Court has pointed out that "it is completely within the power of the [State] Legislature[s] to dispose of fines collected in criminal cases as it will..." but that this power is subject to constitutional restraints (Tumey v. Ohio (273 U.S. 510 (1927))). Essentially, the Court ruled in Tumey that certain state statutes deprive the accused of due process of law in violation of the Fourteenth Amendment because of the pecuniary and other interest in the result of the trial which those statutes gave the official acting in a judicial or quasi-judicial capacity. However, although some have raised the issue that statutes which provide for the distribution of fine revenues to various types of court funds may violate the spirit of the Tumey decision, these statutes have rarely had their constitutionality tested. The American Bar Association Standards of Judicial Administration, for example, suggest these practices should be discontinued:

The purpose of fines and other exactions imposed through judicial proceedings is to enforce the law and not to provide financial support for the courts or other agencies of government. All revenue from fines, penalties, and forfeitures levied by a court should be transferred to the state general fund, and should not be appropriated to the court receiving them or by a local unit of government that supports such a court. The use of courts as revenue-producing agencies is a continuing abuse of judicial process. It has long been recognized as unconstitutional for a judge to have his [or her] income dependent on the outcomes of cases before him [or her], but a similar result often occurs indirectly when the budget of the court in which he [or she], sits is established with reference in whole or in part to the fine revenues produced by the court. This is at present a common practice in local courts of limited jurisdiction. It should be eliminated (1974:107).

It is difficult to assess what impact concerns about the generation of revenues have on different courts' use of fines as sentences. At one extreme, federal judges (who are appointed for life) seem unresponsive to the types of political pressure that may influence judges in other types of courts. It is unlikely that federal judges would be moved by appeals from Washington to generate additional revenue through fine imposition (for example, if narcotics traffickers were expected to support federal drug law enforcement), whereas shelter from similar political and budgetary pressures may be less possible for judges in some state and local courts. Ragona et al. (1981) note that misdemeanor court judges in the three cities they studied were all part of county budgetary procedures, and that they were very aware that their courts were viewed as revenue generators. In the words of one Mankato, Minnesota, judge interviewed by Ragona and his colleagues, "It's just a big factor, we're not talking nickles and dimes; we're talking a lot of money" (p. 23).

One of our initial working hypotheses was that the closer a court was tied to a local funding source, the greater would be the incentive for it to use fines as a mechanism for producing revenue. However, our telephone survey did not prove to be an effective means of testing this hypothesis because of the difficulty we had obtaining reliable answers to questions about funding sources and revenue distribution, and also because of the confounding effect of level of court on source of funding. General jurisdiction courts, however, which we have already noted make the least use of fines, are also the most likely to be funded by state rather than local monies. In contrast, in some local courts where there is a high fine volume, the interest in revenue openly moti-

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vates their continued use. For example, the administrator of the traffic enforcement division in Newark, New Jersey, told us that the fines he collected last year support not only his own operation, but also those of Newark's public library. And courts in Georgia and Alabama report deliberately setting fine amounts in relation to the level of their court and probation costs.

Clearly, the revenue from fines is a factor affecting the extent of their use under some circumstances. In addition, fines can be viewed explicitly as a method of reducing a jurisdiction's reliance on other, much more expensive, sentencing devices, particularly probation and jail; or, at least, sentencing decisions can be made with the knowledge that there are shortages of jail space or cut-backs in probation budgets. In some places, these calculations may be made quite simply. Ragona et al., note that the county budgets for each of the jurisdictions they studied contained projections as to the revenue to be generated by the courts, and that the judges they interviewed understood they were expected to meet these projections even when there was no formal pronouncement of this expectation (1981:23). In other places, revenue/cost calculations may be more complex, especially if there is an expectation that fines should cover the costs of their own imposition and enforcement. Nevertheless, especially during periods when communities are facing serious financial problems and court calendars are full to overflowing, cost calculations and revenue considerations are likely to increase in importance. Although many have inveighed against the kind of analysis that measures the court as an economic instrument (and although judges particularly tend to shy away from such discussions), this is likely to be one of the many ways in which local social and

political concerns are transmitted to the courts and affect the nature of criminal sanctioning.

C. Attitudinal Factors: Views About the Use of Fines

To some extent, views about the use of the fine shape both the legal framework governing its use as a sanction and the extent to which fines are imposed in practice. As other researchers have demonstrated, attitudes--and related customs and expectations--differ considerably from court to court and have a significant impact on case outcomes (Church et al., 1978; Neubauer et al., 1980; Ryan, 1980). Furthermore, the relationship appears to be reciprocal: many attitudes about fines apparently derive from long practical experience with them, but others seem to have preceded and molded that experience.

In the course of our research, we gathered hundreds of views and attitudes about fines, mainly through the telephone survey and site visit interviews with judges, court and probation personnel, prosecution and defense attorneys. Because these views were gathered in a variety of ways, it is difficult to analyze them systematically. It is possible, however, to identify some attitudinal patterns that appear to influence the use of fines, and to delineate some areas of consensus and disagreement that are relevant to the development of policy in this area.

Views about the fine as a vehicle for achieving objectives of sentencing policy

We have already noted in the first section of Chapter II that the literature on fines (both here and in Western Europe) suggest sentencing purposes that are either punitive ("just deserts") or deterrence (specific or general). To what extent do practitioners see fines as

effectively achieving these sentencing goals, and how do their views affect their use of fines in sentencing?

The single most broadly held view of the fine in the United States (and the one that is most strongly felt in felony courts) is that although the fine is a punishing sanction, it is a relatively weak one, suitable primarily for nonserious cases. This attitude appears to originate in the predominant American use of generally small fines for traffic and ordinance violations, a use that seems to trivialize its social meaning as a penalty for other types of offenses. As one advisor to this project put it, many people believe that the idea of an offender paying for his immorality is offensive, and that a fine is "a pretty timid expression of moral indignation." It is not surprising, therefore, that as far back as 1939, the use of the fine as a criminal sanction was viewed as an indication that the state disliked an activity but was not seriously prepared to stop it (Rusche and Kirschheim). This view appears little changed since then; in 1968, Herbert L. Packer suggested that because fines were not a "real criminal sanction," any offense commonly fined should come under civil rather than criminal regulation.

The principal widespread exception to the dim view of fines as sentences for felony cases relates to nonviolent crimes involving economic gain to the defendant. Practitioners generally applaud the use of (often large) fines as punishment that deprives offenders of ill-gotten gain, and perhaps imposes an additional monetary penalty as well. In practice the fine is often used in combination with prison and/or probation for such offenses, apparently in the belief that this either increases the deterrent value of the sentence and/or that it improves the likelihood of fine collection (and thus, the effective

amount of punishment resulting from the fine). As a sole penalty for a felony, however, the fine is not often seen as appropriate unless it is levied as a "tax" on the operator of an illegal business in the expectation that it will deter its continued operation.

Another major exception to the view that fines are inappropriate for more serious cases involves serious traffic cases (especially DWI) that may be handled by either felony or misdemeanor courts. This is an area in which fines are often used for offenses regarded by many as being very serious. However, in many jurisdictions, the view is held that in such cases fines should be combined with other penalties, including imprisonment for short periods, in order to increase their value as a deterrent.

Although practitioners we interviewed differed somewhat on these issues by region of the country, there appear to be distinct patterns by type of court. Respondents in state general jurisdiction felony-only courts tend to take a much more negative view of the fine's effectiveness as a punishment and as a deterrent than do their colleagues in courts that handle misdemeanors. The caseloads in many felony courts include a high proportion of defendants charged with crimes of violence, for which jail or prison is generally viewed as the appropriate disposition if the defendant is convicted. In addition, fines are typically not regarded by American upper court judges as having sufficient deterrent effect on such defendants (especially those who are repeat offenders), nor do judges tend to regard a fine as sufficiently punitive in the case of violent offenses.

For other types of offenses handled in felony courts -- those not necessarily regarded as requiring imprisonment -- probation tends to be

preferred over the fine. This preference appears to result either from the theory that some sort of continuing supervision or social control is necessary, or from the view that defendants in these courts are too poor to pay fines of sufficient magnitude to reflect the severity of the offense, particularly if defendants must also cover other financial costs associated with their arrests (including lawyers' fees, court costs, bonds, etc.). Yet, as we have indicated previously, there are regional (and court-by-court) differences in the extent to which these attitudes are held, with some felony court judges (particularly in the south) favoring a combination of probation and fines in many such cases. Personnel in these upper level courts express the view that even relatively poor defendants can pay, and do pay, especially when their behavior is monitored. They also tend to believe this sentencing approach represents a deterrent; as one respondent put it, "When you hit the pocketbook, you hit home."

Despite these notable exceptions, the view that a fine sentence can be a meaningful punishment and an effective deterrent tends to be more common among practitioners in limited jurisdiction courts who routinely deal with less serious criminal offenses. But even lower court practitioners who favorably regard the fine's potential in achieving these sentencing objectives express substantial ambivalence about its application. This stems from two widespread perceptions: first, that many defendants in these lower courts cannot pay more than a token fine amount because of their poverty, and second, that most fines, even small ones, are not routinely collected by the courts. Although, as we have already pointed out, these are assumptions that remain largely untested empirically, they hold sway among practitioners in many courts.

In New York City, for example, most lower court judges we interviewed firmly held these views (despite our findings to the contrary, at least about collection), and these views were influential in judges' ranking the fine below both probation and jail in the degree of punishment this sanction typically imposes on defendants.

Views of the fine as a method for responding to systemic pressures

Particularly in limited jurisdiction courts, practitioners often feel themselves caught in a classic squeeze: high case volume, limited dispositional resources, and pressure to make decisions quickly. While the range of available sanctions often appear greater at the misdemeanor than at the felony level, the realities of choice tend to be severely limited (Ragona et al., 1981:2). Jails are often overcrowded, probation services (if they exist at all) have high caseloads, and there is usually a paucity of community social services. Under these rather common conditions, judges sometimes select the fine because there is "no other choice." Although many judges we interviewed saw the fine performing this dispositional function in their misdemeanor courts, some felt this use was not to be applauded, even though it was understandable. "It's probably better than not doing anything at all;" and "it's better than an unconditional discharge" were not atypical comments.

Other judges, however, took a more positive view of using the fine as a response to systemic pressures. Some argued that the fine is a relatively inexpensive way (compared to jail or probation) of providing some punishment for relatively common criminal behavior that, once brought to the attention of the court, cannot be ignored. Still other judges took the position that the fine is also a more meaningful sentence than jail or probation under these conditions, particularly for

first offenders. Finally, not a few pointed out that the fine is generally more desirable than jail in the many sentencing situations in which the offense or length of prior record demands punishment be imposed but when protection of the public does not require imprisonment.

Views about the fairness of using the fine as a sanction

Closely allied to practitioners' ambivalent views about the fine's effectiveness as a sentence and its utility as a dispositional device is the feeling that the fine can be an unfair sanction. Fines are sometimes seen as "mean" sentences when imposed on poor people who will experience hardship in paying them, while the same sentence may be relatively meaningless when imposed on those who are financially better off. In the words of one clerk of court, "For the wealthy, a fine is not much of a sentence, while for the poor it means they get deeper into debt." Another commented that "gangsters can pay anything; poor people can't." Yet these views are tempered somewhat by the recognition that for many poor defendants, the real alternative to a fine sentence may be a short jail term. Hence, a not uncommon view is that unfairness may be compounded by not using fines.

To some extent, of course, these ambivalent views reflect a dissatisfaction with the use of "tariffs" for particular offenses which fail to take into account defendants' differing abilities to pay, but which enable judges to dispose of large numbers of similar cases swiftly and routinely. As we have already noted, in many jurisdictions judges appear to set fine tariffs well below current legislative maxima because they perceive most defendants to be poor, and only occasionally do they attempt to formally differentiate among defendants of differing degrees of poverty. Judges who do attempt to use informal "means tests" in the

course of establishing small variations in fine amounts (e.g., by asking about defendants' employment situations or their expenditures), often express an interest in new ways of setting fine amounts, such as the European day fine systems discussed in Chapter II. However, judges (and other court officials) also express concern that the introduction of more complex methods of determining means in relation to fine amounts may increase the complexity of the sentencing process in otherwise routine cases, thus interfering with the court's ability to handle its calendar expeditiously.

Views about collection and enforcement problems

By far the most common disadvantage of fines cited by those we interviewed was the "collection problem," which seems to have two related but distinct aspects. One aspect is administrative in the narrow sense: the necessity for keeping records, monitoring payments, and so forth. In contrast with a sentence to jail, prison, or even probation, a fine sentence often imposes administrative demands (and related expenses) on the court--especially if the fine is to be paid in

installments.¹² From an overall "system" perspective, fines are certainly less expensive to administer than probation or jail, but from the vantage point of court administrators, the costs of collection--most of which come out of the court's budget--often are, or appear to be, high. Clerks and administrators (more often than judges) repeatedly took the position that "it's foolish to spend more than the amount of the fine to collect it."

The second aspect of the collection problem, from the perspective of practitioners (administrators and judges alike), is the problem of what to do about collecting fines from those persons who are (or claim to be) indigent. Interestingly, although we heard the view expressed over and over that fining is problematic because collection is difficult, neither court administrators nor judges could document the extent of this problem. And in our survey of court clerks, a significant proportion in limited jurisdiction courts felt that indigency was rarely a reason for non-collection in their courts (see Table III-5 in Chapter III). Whether this is because their defendant populations are not

¹²In a recent opinion, a New York City lower court judge expressed her frustration in dealing with poor offenders sentenced to pay a fine. She notes,

...indigency may prevent payment of any amount, and every adjournment for staggered \$10 payment (or none at all) only adds to the already enormous case load of each of the Criminal Court parts which have become virtual "bill collectors" for as many as 15-30 fine cases daily in addition to the regular calendars of 50 cases or more. (Judge Lorraine Miller, May 13, 1981, in People v. Goddard, a case in Kings County Criminal Court.)

Indeed, our sample of sentenced cases from the New York City Criminal Court confirms this problem. Of the 479 cases (out of the 601 that were fined) that were calendared subsequent to imposition of the fine, more than half were calendared again (Zamist, Working Paper #10, 1982:107).

truly indigent, or because fines are imposed upon poor defendants in these courts in amounts they are able to pay, is unknown.

Our interviews suggest, therefore, that the widespread perception of serious collection and enforcement problems, regardless of their actual extent, negatively affects practitioners' views about the use of fines. Our interviews also suggest that judges may be less knowledgeable than court administrators about the realities of these practices. This is not surprising because judges typically only see those offenders who return to court when payments are not forthcoming, and because communication across various parts of the criminal justice system is often inadequate. This situation is exacerbated by court systems' lack of attention to compiling routine management information on their fine collection and enforcement activities. It is likely, however, that these perceptions (and, as in the case of New York City, the misperceptions) about fine collection affect judges' sentencing practices, and the lack of vital data on collection restricts their ability to reassess their use of fines in relation to other sentencing options.

The Growing Popularity of Restitution

A number of those we interviewed who are cynical about the enforceability of fines felt that greater attention should be given to alternative monetary sentences, particularly restitution. Although the interest in restitution reflects a national trend toward greater concern about the victims of crimes, it is nevertheless somewhat surprising that court officials who hold negative views about fines should hold such positive views about restitution: the two types of sanctions involve many of the same practical problems of collection and enforcement.

In early English law, among other legal systems, monetary penalties for crimes and other offenses were paid to the victims of the offenses, or to their families. In medieval Anglo-Saxon law, for example, "wergeld" was paid to the family of someone killed, based on the victim's gender, age, rank, and influence. The "bot," another payment in Anglo-Saxon law, was for civil damages to the victim of an injury, the amount of payment proportional to the harm inflicted.

While civil law has continued to focus on damages to injured parties, English criminal law, particularly as it has evolved in the United States, has until recently emphasized fines paid to the state almost to the exclusion of victim restitution. And, in fact, a number of legal theorists have questioned the appropriateness of mediating in the criminal courts what they take to be matters between private citizens. Only recently, in the wake of public interest in victims of crime, has the concept of restitution been rediscovered as a criminal sentencing option.

Judge Lois Forer of Philadelphia's Court of Common Pleas is an often quoted advocate of the expanded use of restitution. However, Judge Forer also sees fines as playing an important sentencing role, especially in white-collar cases where there have been substantial illegal gains. She writes:

The use of fines and orders of restitution as an alternative to prison has not been adequately explored. It has been wisely observed that the fine is the cheapest and by no means the least effective penalty. It is also probably the least studied of all forms of sentences. A fine has many advantages over prison. It spares the offender the degradation, brutality, and crime-

inducing experience of prison. It saves the public the enormous financial and social costs of maintaining hundreds of thousands of inmates in prison (1980).

Notwithstanding Judge Forer's advocacy of both fines and restitution, many judges, academicians, politicians, and the general public appear to have embraced the idea of restitution at the expense of fining--viewing restitution as meeting the needs of crime victims as well as being potentially rehabilitative in resocializing offenders.

Judges contacted for this research all seemed more interested in restitution than fines. Judges hearing felony cases found restitution of far greater interest, and federal judges seemed particularly keen on restitution payment, perhaps in part because they have so little interest in the production of governmental revenue from fining. Restitution (like a fine) is thought to be appropriate for serious offenses in combination with an imprisonment sentence, to be paid after the offender is released. And a defendant may be deprived of illegal gains as easily through restitution as through a fine, they say. Some of the court administrators surveyed by telephone had much the same views.

Likewise, other court-related practitioners also seem to favor restitution over fines. The prosecutor for Richmond County (Staten Island) in New York City told researchers that his concern was for the victim--"that's our client!" And a public defender from the same county expressed preference for restitution too. A supervisor of probation services for the federal courts said that his office prefers to recommend restitution in their presentence reports rather than a fine, but

that it is not always possible to identify "someone to restore." A probation supervisor in a state system reported that he had solved that problem in his own thinking by conceiving of fines as broadly restitutional in order to justify their wide use: "I look at a fine as restitution back to the taxpayers of this county, not just collecting money."

Even in the South, where fine revenues are relied on for court systems' support, restitution has gained in popularity as a sentence. However, these courts still tend to impose fines and court costs along with restitution, creating substantial penalties for offenders, sometimes running into thousands of dollars. Where this is the practice, as in Georgia, court and probation personnel report that restitution receives priority. When an offender makes installment payments against his total obligation, they are credited to the restitution account until that is satisfied (and the victim paid), before any payments are credited against the fine obligation. Also in Georgia, there are correctional programs to enable offenders to work off their restitution (but not fine) obligations. Money earned is managed for the offender, and passed along to the victim.

Even taking into account current concerns with crime victims, it is somewhat ironic that attitudes toward restitution have become so much more favorable than toward fines, since restitution has the same problems of imposition, collection, and enforcement as the fine. Furthermore, the efficacy of the sentence is no better established for restitution than the fine. Although restitution is praised for its rehabilitative potential (as well as its humane concern for victims), the achievement of rehabilitative goals continues to be a matter of faith rather than of empirical validation. Unless the distinction is

communicated very clearly by the court, it is doubtful that defendants perceive a restitution order very differently from a fine--especially when they are making both kinds of monetary payments to the court.¹³

A blurring of the distinction between fines and restitution occurs in the views of some practitioners who would like to have fine revenues absorbed into state funds set aside for the compensation of crime victims. Such an approach is regarded as especially useful for jurisdictions characterized by largely poor populations where an offender is unlikely, by himself, to be able to pay substantial restitution to the (often poor) victim of his crime. It is also a means of providing compensation to the victims of crimes for which there are no arrests. In the former case, it would permit the amount of the criminal penalty to be set in accordance with the gravity of the crime and the means of the offender (as in a day fine system), yet still provide a

¹³ In the English court system, for example, there is no routine effort to make clear to the offender that some of the money paid to the Court will be passed on to the victim. It appears that the offender merely registers the fact that he owes a total amount. Subsequent dealings with the fines office about its payment do nothing to dispel this notion: the staff commonly refer to all moneys to be paid as "the fine."

level of compensation to the victim that reflects the extent of injury or loss.¹⁴

¹⁴ This notion has already influenced some legislation, for example, in the U.S. Senate's drafting of federal Criminal Code revision bills. Three bills (S 1 from the 94th Congress, S 1437 from the 95th, and S 1722 from the 96th) have identical provisions that federal fine payments should be credited to a proposed U.S. Criminal Victim Compensation Fund. The report accompanying S 1437 noted that the "indirect restitution effect" that this provision would achieve "adds an independent justification for the utilization of this sanction [fines] that previously has not existed in federal criminal law."

The legislatures of two states, Florida and California, have already passed statutes allowing fine revenues to be used for the purpose of victim compensation, and New York State is said to be considering a similar statute. A number of states have passed statutes that authorize special levies on convicted defendants for the purpose of victim compensation (California, Connecticut, Florida, Indiana, New Jersey and Virginia). We can speculate that these state legislatures were sympathetic to the restitution concept (or were interested in capitalizing on sentiment for crime victims) but were unwilling to withdraw fine revenue support from governmental recipients already authorized by statute.

CHAPTER VI

FINES AND OTHER SENTENCES: POLICY ISSUES AND DIRECTIONS FOR FUTURE RESEARCH

A. The Place of Fines in Criminal Sentencing

We have undertaken this exploration of criminal sentencing to see how fines are currently being used and enforced as criminal penalties in American courts because, as Judge Forer's observations (*supra*, pp. 170-1) suggest, this has been essentially uncharted territory. There still remains a great deal to be learned about the fine and its effectiveness as a criminal sanction. Our initial research, however, has led us to recognize that fining is already an important part of criminal sentencing in the United States, particularly in the many courts around the country that handle misdemeanors and lesser felony offenses.

There is abundant evidence that other monetary penalties (restitution in particular) are gaining favor with American legislators and with some judges. It is a matter of concern that, in the context of these developments, fining--the one major area of sentencing in which there exists considerable practical experience with the benefits and problems of imposing and enforcing monetary sanctions--has been virtually ignored as a subject of study. The actual use of fines as sentences for criminal offenses has remained subterranean in the dispositional process, often shrouded by something akin to embarrassment or dismissed as uninteresting. There are probably a number of reasons for this lack of attention to the use of fines. Among them is the ambivalence of judges toward fines as sentences for poor offenders and the

prevalence of a conventional wisdom that portrays such sentences as difficult to enforce and ineffectual as punishments.

This conventional wisdom is drawn into question by the data collected in this study. Certainly one of the oldest ways of punishing people without imprisoning them, fines also appear to be one of the most widely used sanctions in American criminal courts for all except serious felony cases. Our data, though uneven, suggest that many courts depend quite heavily on fines--alone and as the principal component of a sentence in which a fine is combined with another sanction--in sentencing criminal offenders under a wide variety of offense categories including some generally considered relatively serious. And, importantly, many of these courts regularly fine persons whose financial resources are extremely limited. As with most conventional wisdom, there is surely some truth to the notion that it can be difficult and time-consuming to collect fines from poor people and that the end result may be delayed incarceration resulting from default rather than for the original offense. However, our research provides evidence that collection and enforcement are far from impossible with poor offender populations, are not necessarily costly, and do not inevitably result in jailing large numbers because they default. Fine collection in the New York City Criminal Court, for example, appears fairly successful with relatively little expense. As reported in Chapters III and IV, a number of other courts contacted through the telephone survey reported quite high collection rates and, although many of their defendants are poor, did not always perceive indigency to be a serious obstacle to their use and collection of fines.

Lower courts have few options for punishment other than short jail terms and fines. Probation resources, if they exist at all, tend to be very limited in these courts. Conditional discharges are sometimes an appropriate sanction, but without resources it is difficult for a court to monitor or enforce the conditions. Other sentencing options often must rely on services offered by community agencies (which tend to have shrinking resources and are likely to be difficult for the courts to supervise) or, like restitution, have many of the same problems as fines.

The dilemma faced by American lower court judges at sentencing is thus broadly similar to the situation in European lower courts, particularly in England and West Germany. In those countries, fines have been the sentence of choice for many types of relatively serious as well as less serious criminal offenses. They have also been relied upon as the critical element of reasonably successful national sentencing policies designed to reduce the use of short-term imprisonment.

While there is no similar policy in the United States at the present time, the pressing problem of overcrowded jails and local lock-ups has raised questions about the wisdom of continuing to rely on our sentencing strategy of short jail sentences for offenders convicted of non-violent crimes. As one observer has noted, while this problem is not novel, it is becoming far more pervasive:

The problem of local jail overcrowding is not new. But it is new to Shasta County, Calif., Platte County, Mo., Anoka County, Minn., and Howard County, Md. These jurisdictions are among dozens, perhaps hundreds, of rural and suburban

counties and small cities that have suddenly developed the same problem that has plagued big city and some Southern jails for a decade. Their jails are overflowing--with pretrial detainees, with sentenced minor offenders and, sometimes, with felony offenders that state institutions cannot or will not absorb. Since overcrowding was unknown in many of these jurisdictions until quite recently, they have not yet reacted with either of the usual two responses: construction of added facilities or creation of new alternatives to incarceration (Allinson, 1982: 18, emphasis added).

Particularly given the explosive growth of jail populations that has taken place in the past decade, it seems desirable to examine closely the sentencing policies of American courts that handle misdemeanors and lesser felonies. These are the courts in which the major punishment options already in place are short-term jail sentences and fines, and a shift toward greater use of fines in these courts could have a significant impact upon the jail overcrowding problem.

One of the striking findings from our research on fine utilization is the variability of practice in these courts with respect to their reliance on fine sentences in criminal cases. It is clear that courts--even courts with roughly comparable caseloads and offender populations--differ enormously in the extent to which judges make use of fines (alone or in combination with other non-custodial penalties) in relation to their use of jail and other options. This variability suggests that there may be room for expanded use of fines in courts that do not now use them in a broad range of criminal cases.

The attractiveness of the fine as a penalty is enhanced by several of its features.

- It can be adjusted to a level that is appropriate to the individual and family circumstances of the offender as well as to the seriousness of the offense;
- It can be coupled with probation or other non-incarcerative sanctions;
- It leaves the offender in the community and thus does not destroy his essential social and economic ties;
- It is relatively inexpensive to administer, normally relying on government agencies and procedures that are already in place;
- It can be financially self-sustaining and, unlike incarceration and community supervision, it need not be a heavy financial drain on government. To the contrary, fines produce revenue that can be used to support public services or victim compensation.

These attractions are not sufficient, however, if they are outweighed by impediments to broad use. The most commonly raised drawbacks to fines are those associated with their imposition on poor defendants. Can fines routinely be set at amounts that produce a level of punishment appropriate to the offense and that are also realistic in relation to the means of the offender? And, closely related to the problem of imposing a fine that reflects an appropriate level of punishment, can fines be collected without undue cost and/or the imprisonment for default of large numbers of offenders?

We are far from certain that the answer to these questions is an unqualified yes. However, as we discuss in the next section of this chapter, we believe that many of the very real problems involved in the

use of the fine as a punishment can be overcome, and that further investigation of the fine's potential is warranted--especially in view of the lack of other alternatives to jail as a punishment.

Two other sets of problems also receive attention in this chapter. One set is essentially conceptual--how, for purposes of future policy development, should the fine be viewed in relation to other types of monetary or quasi-monetary sanctions? What are the elements that these sanctions have in common, and what are the key differences? What are the policy implications that flow from these commonalities and differences?

The second set of problems relates to the current status of knowledge about fines and their use. Our exploratory study has inevitably raised a lot of questions. Therefore, in the final section of this chapter, we outline what we think are the most important areas for future research. Then, in the final chapter of the report, we offer a series of concrete recommendations for practitioners and policymakers who are interested in improving the effectiveness of the fine as a sanction.

B. The Fine as a Punishment: Key Issues of Policy and Practice

Theoretically, the primary purpose of imposing a fine as the sentence for a criminal offense is to punish the offender. But how realistic is it to think of the fine as a meaningful punishment for non-trivial offenses? Particularly given the socio-economic situation of many persons convicted of such criminal offenses, is a fine a feasible alternative to jail?

At the outset, it seems helpful to limit the scope of our examination of these questions. As a practical matter, it does not appear useful to think of the fine as an alternative sanction for offenders for whom a relatively lengthy term of imprisonment (e.g., six months or more) is now widely thought to be appropriate, either because they represent a danger or because their crimes are too grave for the public to accept other forms or lesser doses of retribution. It makes more sense to focus on more commonplace offenders--on non-trivial cases in which the sentencing choice is between short-term jail or a fine (or perhaps some other form of non-incarcerative sanction) and in which the general tendency in American courts has been toward imposing a jail sentence. The key issue is whether the fine can be positioned as a punishment of sufficient weight to be widely regarded as an appropriate punishment in these cases.

A principal obstacle to acceptance of the fine as a punishment is the common operating assumption that criminal defendants are almost invariably poor people who cannot (or will not) pay a fine amount that would reflect the gravity of the offense. This assumption militates against the use of fines for non-trivial offenses. Moreover, when fines are used (usually for offenses within a relatively narrow range of seriousness), this assumption encourages the application of a "tariff" system in which relatively low fixed fine amounts are imposed on all defendants convicted of a particular offense. Although tariff systems are administratively simple, they often mean the fines do not have much impact either as a punishment or as a deterrent.

The key to this problem is developing a non-tariff system in which fines can be imposed routinely so as to reflect the gravity of the

offense and the means of the particular offender. Based upon West Germany's experience with the day fine system, discussed in Chapter II, we know that the Scandinavian concept of tailoring a fine in this way is possible in a large heterogeneous society. Whether American courts could function effectively using a day fine system is an empirical question which cannot be answered merely by speculating about similarities and differences in the two societies and their offender populations. We shall suggest in the next chapter that systematic experimentation with a day fine system should be tried, but it is worth noting that embryonic day fine systems already exist in some American courts. In these courts, judges attempt to assess offenders' varying degrees of poverty, and to set fine amounts on a case by case basis in light of this information. We need to know more about judges' experiences doing this, and to experiment more systematically with ways of doing it routinely.

The introduction of a day fine approach to determining the amount of a fine penalty should improve the fine's potential as a flexible and broadly applicable punishment. If successfully applied, it should encourage judges, criminal defendants, and the general public to regard the fine as a more meaningful sentence in relation to other options, as it is now regarded in parts of Europe.

The difficulties of introducing a day fine system on a broad scale in the United States should not be underestimated, however. Three sets of questions seem of particular importance in gauging the chances for successful implementation. First, will it be possible to obtain adequate information about the means of individual defendants, prior to sentencing? Clearly some American judges now find it possible to obtain

such information. In West Germany, the courts have generally obtained adequate information from offenders themselves and from police reports which contain details of employment and other income. However, while obtaining the information should not pose insuperable difficulties in the United States, it may introduce additional paperwork into courts that already feel overburdened. Second, assuming that the mechanical problems of obtaining the requisite information about offenders' means can be overcome, would the public accept implementation of such a fine system? If fine amounts take into account the means of the offender, it is inevitable that some striking disparities will occur. For example, an employed, middle-class offender may be fined a much larger amount, in terms of actual dollars, than a near-destitute offender convicted of the same (or even a more serious) offense. It would not be surprising if such results produced criticism from some segments of the media and the public.

Third, will it be possible to enforce the fines imposed under such a system? Because such fines, by definition, would be set at amounts which the fined offender reasonably could be expected to pay (albeit with difficulty, in some cases), default should be less likely; but it would occur nevertheless in some instances. It will be necessary to develop sanctions for default, and this will have to be done in a more sophisticated fashion than in the past. Simply translating an unpaid fine balance into jail or community service at a set dollars-for-days "exchange rate" would not be sensible. This is partly because it might well result in disproportionately long periods in jail for defaulting affluent offenders. However, use of a two-stage system similar to that used in Germany and Scandinavia might be helpful here.

The approach to establishing the monetary value of the fine in those countries begins with setting the number of fine units that reflects the gravity of the offense (and the offender's prior record). This number of units would be the same for the same offense, regardless of the offender's means. Each unit could be translated into a set number of days in jail or in a work program in the event of default. Thus, the penalty for defaulting on a fine representing a given level of punishment would be the same, regardless of the final monetary value of that fine. That value is not calculated until the offender's means is assessed and an appropriate amount assigned to each fine unit. Under such an approach, the consequences of default on equivalent fine sentences would be similar for offenders of different means, and it could be communicated to the offender at the time the sentence is imposed.

As this discussion suggests, efforts to enhance the seriousness of the fine as a punishment must take account of the critical linkages between the imposition of a fine and the methods used to collect and enforce it. The fine is one of the few sentences in which most (and sometimes all) parts of the sanctioning process fall within the control of the court itself. It is unlikely that fines can be more meaningful punishments unless courts not only set them realistically but also view them seriously, communicate to fined offenders that their obligations (however large or small) are to be taken seriously, and follow through with appropriate sanctions when necessary. This approach conceives of fining as a process that involves a number of activities, each of which is inextricably linked to all the others, and none of which can be overlooked in implementing policy.

In the first place, the choice of a fine sentence must be appropriate in light of the offense and the offender's prior record; punishment should be a primary objective. Information on the economic circumstances must be made available to the sentencer, and the amount of the fine should be set in relation to the gravity of the offense, the nature of the offender's prior record and the means of the offender. Thus, the level of punishment should be appropriate to the crime but also realistic in the sense of being enforceable. At sentencing, the court must communicate to the defendant the seriousness with which it views his payment obligation, and the court must continue thereafter to signal its watchfulness over the defendant's payment progress. Finally, faced with an offender in default, the court must be prepared to act swiftly and, when necessary, to use coercive methods such as distraint of property or committal to custody.

C. Fines in Relation to Other Monetary Penalties

We noted earlier that monetary sanctions--especially restitution--seem to be gaining favor with legislators and judges in America. In considering the possibility of expanding the use of fines as an alternative to jail, it is important to explore the relationship between the fine and the other types of monetary sanctions that may be imposed on an offender. This is a somewhat confusing area because there are substantial variations in nomenclature and in the legal status of particular types of sanctions from one jurisdiction to another. A detailed examination of these various sanctions is well beyond the scope of this study. However, it seems useful to make a brief inventory of the principal types of monetary sanctions, to identify key common features and

significant differences, and to consider what implications these commonalities and differences may have in developing future sentencing policy.

While other monetary sanctions can doubtless be identified, our brief discussion will focus on six types currently in use in American courts. They may be briefly described as follows:

- The fine. As preceding chapters have described, the fine is a statutorily authorized sentence for some types of offenses in every American state and in the federal system. Maximum (and sometimes minimum) fine amounts are established by statute. The fined offender usually pays the amount of the fine to a court or probation service, which then transmits the money to the appropriate governmental units in accordance with statutory directions for the handling of fine revenues.
- Restitution. Restitution may involve either the payment of money or the performance of services (or conceivably both), usually in an amount or at a value that reflects the value of the property lost or the costs incurred by a victim who has been injured in the commission of the offense. The intended beneficiary is the victim of the specific offense committed by the offender. Depending on the statutes of the jurisdiction, restitution may be a sentence in its own right or (where there is no explicit statutory authority for it as a sentence) may be imposed as a condition of probation, conditional discharge, or suspended jail sentence. Where restitution involves money payments, these will typically be collected by the court or probation service and paid to the victim.
- "Contribution". In some courts, a practice has developed under which, in certain cases, a defendant will make a "contribution" to a specific charity or non-profit organization as a condition of being placed on probation or receiving a conditional discharge, or perhaps as part

of an agreement with the prosecutor that there will be a nolle prosequere. The amounts of some of these reported contributions have been very substantial. They are nowhere authorized by statute (although they do not appear to be forbidden as conditions of probation or other dispositions), and the contribution is likely to be paid directly to the beneficiary rather than to the court or other governmental agency.

- Penalty Assessment. A number of states have recently enacted statutes which, although they vary considerably in content, generally authorize or require the imposition of a specific monetary penalty on an offender convicted of a certain class of offense. New York's penalty assessment statute, for example, requires the assessment of a penalty of \$75 upon conviction of a felony, \$40 for conviction of a misdemeanor, and \$15 for a violation. The penalty assessment is similar to a fine in that it will ordinarily be collected by the court or a probation agency and paid over to a specified governmental agency. (In New York, it goes to the state's general fund; in New Jersey, to a crime victim's compensation fund.) Unlike a fine, however, the penalty assessment tends to be fixed at a flat rate for a broad class of offenses, or at least to be imposed with little regard for the gravity of the specific offense or the utility of the offenders to pay it.
- Costs. Under federal law and the statutes of many states, convicted defendants may be required to pay all or a significant portion of the costs of prosecution (e.g., fees and mileage of prosecution witnesses; jury fees). Statutes generally provide that an indigent may not be required to pay prosecution costs, but the question of what constitutes indigency for this purpose does not appear to have been explored. The imposition of costs--generally payable to the court, which will then pay over all or the allocable portion of the amount to the prosecuting authority--is an even less visible sanction than the fine. In many

limited jurisdiction courts, however, it is a commonly imposed sanction which, even though it is not a "sentence" within the narrow definition of that term, may add significantly to the overall financial burden on the convicted offender.

- Community Service. Community service does not involve the direct collection of money from a defendant, yet it is plain enough that a monetary value can be set on the performance of a specific number of hours or days of a particular type of work. Like restitution, community service is a sanction that is sometimes but not always authorized by statute as a separate sentence; in the absence of such authorization, it may be imposed by a judge as a condition of probation, conditional discharge, or suspended jail sentence. In contrast to restitution, the intended beneficiary of a community service order is the community rather than a specific victim.

While these brief sketches present only the bare outline of six different types of sanctions (and do not begin to indicate the many variations that exist), they point to several features these sanctions have in common. First, all involve a court-ordered requirement that the defendant pay money or (in the case of community service and some forms of restitution) provide services on which a monetary value can be placed. Second, from the perspective of the defendant, there is little to distinguish one from another. He will have to either pay over money or provide services, and often will not know where the money goes or what individual or institution is the beneficiary of the services. Third, their purposes are similar: each sanction, whether or not it is a "sentence," is essentially punitive and may also be thought to have some deterrent value. Some of them (particularly community service and some forms of restitution) may also be intended to serve other sentencing

purposes such as rehabilitation and vindication of the victim's interests, but punishment is clearly a central purpose of each of the six. Fourth, they have common problems of enforcement: the court must monitor the payments (or the performance of services) and must be prepared to impose a more serious sanction in the event of non-compliance.

For purposes of policy development--in particular the development of alternatives to short-term incarceration--the fact that all these sanctions face essentially the same problems of enforcement (and have available essentially the same strategies and techniques for enforcement) is particularly salient. Difficulties of enforcement are often seen as a drawback to wide use of fines, but it is clear that other types of monetary or quasi-monetary sanctions have the same drawbacks. If they are to be preferred to the fine, such a preference logically should be because the other sanctions have distinctive features that make them more attractive. Yet, it is not at all clear that the ways in which the other sanctions differ from a fine make them more appealing.

Restitution seems more attractive to some legislators and judges than does the fine, mainly because it takes account of the victim's interests, a figure long neglected in the American criminal justice process. Additionally, it is thought to have some potential for rehabilitation, by making the offender aware of the injury he has inflicted and of his responsibility to help restore the injured person. But restitution is severely limited in scope and is a relatively inflexible sanction. A restitution order can only be made when there is an identifiable victim for whom the consequences of the offense can be expressed relatively easily in dollar terms, and when there is a convicted offender capable of paying money and/or providing services to that victim.

Only a small proportion of all crime victims are likely to be able to benefit from a sentencing policy that emphasizes restitution. And only a small proportion of offenders are likely to have the financial ability to provide meaningful levels of restitution.

The "contribution" approach, although it does not deal directly with injury to the victim, has the same flexibility as the fine in terms of the capacity to tailor its amount to the gravity of the offense and the means of the offender. Indeed, in situations where there is a low statutory fine ceiling and an affluent defendant, it may have even greater flexibility. But this approach is essentially extra-legal: it puts the judge (or, in some instances, a probation service) in the position of arbitrarily selecting a charity, a non-profit organization, or some other worthy entity as the beneficiary of a windfall, without any statutory guidances or authorization whatsoever.¹ Moreover, the approach may give the affluent defendant a unique benefit, in the form of tax advantages from a charitable donation, not enjoyed by his counterparts who are simply fined.² When judges order such contributions or

¹ For example, in April 1980, a federal judge in Denver, Colorado found an oil corporation guilty of conspiracy and false statements. The court accepted the defendant corporation's offer to contribute \$150,000 to charity, \$50,000 to a safe house for battered women and \$100,000 to another social service agency in Denver. In Washington, D.C., federal judges have also approved dispositional schemes under which corporate defendants have contributed funds to a local agency that aids probationers and parolees under the supervision of the U.S. Probation Office.

² See, for example, the report in the New York Times of June 2, 1978 concerning a leading firearms manufacturer in Connecticut; the corporation pleaded no contest to felony charges that it had conspired to illegally ship rifles to South Africa. The federal judge announced he would place the corporation on probation if it distributed \$500,000 to local community charitable organizations; he also fined it \$45,000 which was less than a tenth the maximum penalty. The U.S. Attorney for Connecticut was not satisfied with the sentence partly because the corporation could claim an extensive tax deduction for it.

agree to them as part of a negotiated disposition, they in essence make non-legislative appropriations of funds to recipients of their own choosing, rather than following the scheme for distribution of fine revenue that is provided by statute. This problem was rather succinctly stated in an April 7, 1981 letter to the Editor of the Denver Post by James L. Treece, a former U.S. attorney:

I wish to protest, as a former U.S. attorney for Colorado, the growing practice of allowing or requiring defendants in criminal cases as part of a plea bargain to make payments to a selected charity. I believe such funds are, in fact, fines belonging to the state or federal government, and disposition of such funds is the prerogative of the legislative body with jurisdiction of such funds.

The use of this sanction raises questions about the adequacy of existing statutes governing the distribution of revenue from fines, and suggests a need to look more closely at the relationship between the imposition of a fine (or any other type of monetary sanction) and the ultimate distribution of the money when it is paid.

Costs and penalty assessments differ from the fine in that they tend to leave appreciably less room for taking account of the seriousness of the offense or the means of the offender than does the traditional approach to fining. Costs are sometimes established mathematically, by adding the actual expenses of prosecution that can be charged to the defendant; other times a court will establish a fixed amount to be charged as costs of the prosecution. Penalty assessment statutes vary widely, but generally they tend to establish fixed amounts for broad categories of offenses (e.g., felony, misdemeanor) or to make the amount of the penalty a proportion of a fine sentence. The recipients

are different: costs, when collected, go to the court and/or the prosecuting authority, while penalty assessments go into whatever funds are designated by statute. Both these sanctions have powerful political forces behind them. Costs, for example, can be an important (and largely invisible) component of the budgets of courts and prosecuting authorities. Penalty assessments are also viewed as significant revenue producing devices in some jurisdictions. To the extent that policy-makers are interested using fines in lieu of jail, they will have to take account of the existence and impact on the offender of both these sanctions. Imposition of costs and/or a penalty assessment can place a significant economic hardship on an offender before an effort is made to set the amount of a fine. The lack of flexibility in these sanctions, coupled with the strong pressures for imposing and enforcing them, will make it difficult to implement fine policies that take account of the means of the offender.

Of all the sanctions, community service is the one whose distinguishing features seem most attractive for purposes of developing a viable alternative to short-term jail. Like restitution, community service can incorporate goals of rehabilitation and reparation as well as punishment and deterrence. However, because it does not require a "matching-up" of offender and specific victim, it can have a much broader scope of application. Moreover, the amount of community service ordered as part of a sentence need not coincide with the value of the loss or injury to the victim; the severity of the punishment can be increased to reflect the seriousness of the crime and the offender's prior record. The offender's economic situation is also less critical; although the issues in this area are complex, the severity of the impact

of a community service order as a punishment is less likely to vary with the relative poverty or affluence of an offender.

As some critics of community service have pointed out, this sanction is not without drawbacks. Although it was originally conceived of as a genuine alternative to jail, there is strong evidence that many community service programs are used mainly for white middle-class first offenders, rather than for repeat offenders who would otherwise be jailed. The laws authorizing community service often give little or no guidance as to how much community service should be required for various types of offenses and offenders, and there are problems in placing monetary values on different types of service. A recent article in Corrections Magazine notes that many community service sentences are given in lieu of fines, and points out that this can result in essentially the same problem as the fine alone: "a middle-class offender usually can pay a \$200 fine without hardship and walk out of the courtroom, while an offender with no money will be faced with involuntary servitude" (Krajick, 1982: 16).

Community service is markedly less expensive than jail, and preliminary research in New York City indicates that its administrative costs compare favorably with those of probation even when the sanction is focused on more difficult-to-manage repeat offenders (Vera, 1980: 30). However, it is undoubtedly more expensive and difficult to administer than the fine. This cost differential, particularly when viewed in light of the scarcity of resources and the evidence of so many jurisdictions using community service for offenders who would be unlikely to be given jail sentences, suggest that a sensible approach to developing alternatives to jail requires thoughtful targetting of both

monetary and quasi-monetary alternative sanctions. Thus, it makes sense to us to think of community service as a potentially useful alternative punishment in some types of cases in which the offense and offender characteristics combine to make short jail terms a likely outcome--but not all types of jail-bound offenses. Similarly, other types of cases are likely to be responsive to attempts to substitute fines for short jail terms. Neither effort could reasonably be expected to provoke radical shifts in dispositional patterns over a short timeframe. However, careful development of both sanctions, with an emphasis on administrative firmness that might make them acceptable as enforceable punishments could permit them to complement each other in the development of an overall approach to sentencing policy that treats jail, appropriately, as a scarce resource.

More than any of the other monetary sanctions, fines can vary with the means of the offender (as well as with the gravity of the offense and the seriousness of the offender's prior record), and they can be used when there is no specific victim to whom restitution can be paid. A monetary penalty's potential for being a meaningful punishment (and possibly a deterrent) appears enhanced by such flexibility. By directing fine revenues into crime victim compensation funds, the fine can also deal with societal concern about victims, including the victims of crimes that are never solved and victims whose injuries are too severe to be met by restitution payments from the offender. It seems clear, however, that fines are not likely to address concerns about rehabilitation. If it is indeed the case (and there is little evidence pro or con) that restitution payments are rehabilitative if they are carefully related to the victim's loss and clearly seen by the offender

as his personal responsibility to the victim, then something is lost by using a fine when restitution is possible, even if the fine revenue goes to a victim compensation fund.

In sum, each of the strategies for imposing penalties on defendants by "hitting them in the pocketbook," to use a phrase we heard often in the course of this research, has different strengths and weaknesses. On balance, we think there is much to be said for devoting more attention to the fine as a sanction than has been done in the past. Expanded use of the fine as an alternative to short-term jail sentences would require dealing with various operational problems, but one of the major problems--difficulty in enforcement--is one that is shared by all of the monetary and quasi-monetary sanctions. The other serious problem--the perceived inequity in impact (e.g., the rich pay easily, while the poor deplete their meagre resources or go to jail)--can be dealt with by taking greater advantage of the potential to use fines flexibly, by more closely relating them to both the gravity of the offense and the specific means of individual offenders. As we indicated in the preceding section, this will require moving away from a system of set tariffs and toward a two-stage system of fine imposition that draws upon the European experience with day fines. It will also require close attention to the relationship of the fine to community service, and to the development of improved methods for setting "conversion rates" between fines and community service and between both these sentences and jail as a "last resort" sanction for default. As long as the tariff system is used to set fines and unpaid fine amounts are converted to days of community service or days in jail at a flat "dollars-to-days" rate, gross inequities are inevitable. The concept of

units of punishment, determined at the first stage of a two-stage process of imposing a fine, is a critical element here.³

D. Directions for Research

Until very recently, there has been a dearth of empirical research in America on the use of the fine as a criminal sanction. With this report and other recent work (e.g., Gillespie, 1980, 1981, 1982; Ragona et al., 1982; Ryan, 1980; Feeley, 1979) that situation has begun to change, and our knowledge in this area ought to increase substantially in the years ahead. In this section, we outline our thoughts with respect to key problems and issues that might usefully be explored by researchers interested in the development of sentencing policy generally and the use of fines in particular.

We begin with several central propositions. The first is that, although there has been considerably more research on court operations and sentencing practices in recent years than in earlier times, there is still a great deal that we do not know about how courts work. There are obviously enormous variations--in size, caseload, resources, offender populations, practices, attitudes, and a myriad of other factors--from court to court, even within the same state or city. One clear need is for research that, in examining case outcomes and sentencing practices, places a premium on describing system operations, paying attention to operational details and to the larger societal context in which the

³ So also is further consideration of alternative ways of fining the poor (and perhaps also youthful offenders), particularly the suspended fine and "bind over to keep the peace" which we discussed earlier (supra p. 134).

court functions. In the absence of good descriptions of these systems--descriptions that indicate the full range of dispositions available in a jurisdiction and that show what alternatives are employed under what circumstances--it is not possible to understand how any one sentencing alternative (e.g., the fine) fits into the overall sentencing system or to measure the effectiveness of policies designed to change existing patterns.

A second proposition is that the lower courts should receive significantly more attention in future research than they have to date. These are the courts that deal with the overwhelming majority of criminal cases--probably at least 90 percent of the criminal case volume in the United States. Many of these courts now frequently sentence some types of defendants to short term jail sentences. Therefore, improvements in the way these courts function--including, importantly, the ways in which they use and enforce fines--can have a constructive impact upon the day-to-day administration of justice in literally millions of cases.

A third proposition is that action research focused on the use of the fine as an alternative to jail--and, in particular, on the practical problems of adapting some form of the European day fine system to the operations of American lower courts--should have a major role in future research in this area. The widespread use of relatively short jail sentences, often because there is no alternative sanction that is perceived as an effective punishment, is a primary cause of the jail overcrowding crisis in the United States. If the fine is to become a viable alternative to incarceration in a significant proportion of cases, it will be important to develop knowledge about how it can be imposed and enforced effectively and in a fashion that can be seen as equitable.

In addition to arguing generally for more research on the workings of American lower courts, this set of propositions points to a need for two distinctly different types of research related to the use and enforcement of fines. One type focuses on existing practices; its aim is to understand more about how courts function at present and about how fined offenders now behave. The second type looks to the future and is designed to assess the feasibility and effectiveness of policy initiatives designed to make the fine a more meaningful punishment.

Research Focused on Current Practices

This type of research is both descriptive and explanatory, and is basically an extension of the research conducted in this study and by other researchers who have aimed to understand the dispositional and enforcement processes in specific courts. The further development of such knowledge is of critical importance to future policy: if we do not have a reasonably good idea of what the situation is now (and how and why practices and outcomes vary across the spectrum of courts), we will not be able to measure or to understand the effects of future efforts to introduce new policies. Three lines of inquiry into existing practices would be especially helpful in increasing our knowledge about the sanctioning process.

First, we need to know much more about judges' decision-making, especially with respect to sentencing options in the lower courts. How (and for what reasons) do judges decide to use the fine or another sentencing option? In particular, how do they make these decisions when it appears that incarceration is a serious consideration (e.g., when the offense is relatively grave and the defendant has a prior record). When

the judge decides upon a fine in such cases, how does he decide on the amount? To what extent are the economic circumstances of the offender taken into account in this process? When the judge does take the offender's means into consideration, how does he obtain the necessary information and how do such "embryonic" day fine systems work in practice?

Second, it is important to develop knowledge about the behavior of offenders, particularly offenders who have been fined. Although there has been some prior research on this topic in England, there has been almost none in the United States. There are some obvious methodological problems in obtaining reliable data on offender behavior, but this is clearly a subject that is critical to the development of sentencing policy. The fundamental questions are deceptively simple: who pays, who doesn't, and why? More specifically, what types of defendants--in terms of demographic variables and case characteristics--actually pay their fines? How does the size of the fine affect payment, when offenders' means are taken into account? To what extent (and under what circumstances) do very poor people pay fines? To what extent is compliance with a payment order "voluntary" and to what extent is it the result of the court using some kind of enforcement technique? To what extent do fined offenders pay their fines by continuing to engage in illegal activities? Finally, why do some fined offenders not pay? To what extent are defaulters (a) unable to pay; or (b) able but unwilling to pay? To what extent do they believe that, as a practical matter, nothing serious will happen if they don't pay?

Third, we need to know more about the operation and effectiveness of different types of collection and enforcement practices. Our own

research indicates wide variations in practice, even among courts that appear to have similar caseloads and offender populations. And, importantly, some approaches and techniques appear to be markedly more effective than others in obtaining payment promptly and minimizing default. Our own exploratory research suggests that collection rates tend to be higher in courts that set rather short periods for payment of a fine, use installment payments relatively rarely, and are prepared to impose sanctions (including jail) upon persons who default. But these findings are fragmentary; they are based on very rough self-reported data and do not take account of the range of variables that may influence effectiveness in collection. It would be helpful to use them as hypotheses in future research. Such research could tell us more about how specific systems work in practice, and would illuminate future policy considerations. Under close and systematic scrutiny, what are the characteristics that distinguish courts that are effective in fine collection from those that are ineffective? What strategies and techniques appear to work well for specific types of cases and offenders?

A variety of research strategies and methodological techniques can be used to address the kinds of questions outlined here. Indeed, some mix of techniques is essential: all of these lines of inquiry will require analysis of data from actual court records, but it will also be necessary to observe the behavior of practitioners and offenders, and--to the extent possible--talk with offenders and with judges, administrative staff in the courts, and with others involved in the sentencing process. In selecting courts for research, it might be valuable to seek to compare courts that use fines in different ways and that have different success rates in collecting them. A simple matrix illustrates some of the key dimensions of analysis:

| | |
|---------------------------------------|--------------------------------------|
| High Fine Use High Collection Rate | Low Fine Use High Collection Rate |
| High Fine Use Low Collection Rate | Low Fine Use Low Collection Rate |

Ideally, of course, the courts selected for such research would have roughly similar caseloads and resources.

Evaluation of Experiments with New Approaches to Fine Use and Enforcement

This type of research, while complementary to the first, is more explicitly tied to policy initiatives that we believe may help make the fine a more effective alternative to incarceration. If possible, it would be desirable to undertake a few carefully monitored experiments designed to incorporate (a) an appropriately adapted version of the day fine system for imposing fines; and (b) techniques for collection and enforcement that appear especially effective. Such experiments would make it possible to test the soundness of various proposals for enhancing the seriousness of the fine and making better use of it as a sanction, and should also produce valuable information about the day-to-day operation of the courts in which the experiments are tried.

CHAPTER VII

TOWARD MORE EFFECTIVE USE OF THE FINE AS A CRIMINAL SANCTION:
RECOMMENDATIONS FOR PRACTITIONERS AND POLICYMAKERS

Although it would be desirable to know much more about ways to use fines effectively, it is not necessary to wait for the results of future research before beginning to address most of the problems involving the use of the fine. On the basis of existing knowledge, it is possible to suggest practical steps courts and other agencies can take to improve the fine's use as a sanction.

Several themes developed in earlier chapters have an important bearing on developing recommendations for practitioners and policymakers. For example, the fact that some courts use fines very extensively, and for relatively serious criminal offenses, suggests that it is possible to use fines as punishments for non-trivial cases. The fact that some courts (including courts that use fines extensively and that have defendant populations composed predominantly of poor people) are able to collect the fines in a high proportion of cases suggests that effective collection and enforcement is possible even when fined offenders appear to be high risks for nonpayment. The pervasive lack of relevant and reliable information about actual fine use and enforcement suggests the need for improved management information systems and, more generally, for sound management practices and better processes of communication in court systems.

We do not believe that there is any panacea or single "package" of recommendations applicable to every court that uses fines. What may be sound practice in a court serving a small area with a relatively stable population may not be feasible in a high-volume urban court with a caseload that includes many transients or very poor people. Nevertheless, some approaches and techniques seem likely to improve effectiveness in large numbers of courts. Our recommendations with respect to the processes of fine imposition, collection, and enforcement are set forth in the first three sections of this chapter. They involve operating approaches and techniques, and draw on practice already in use in some of the courts that we visited or contacted by telephone during the course of this study. They also build upon findings from other research dealing with aspects of court management generally (see, e.g., Alfini et al, 1981; Neubauer et al, 1981; Sipes et al, 1980; Friesen et al 1980; Mahoney and Solomon, 1982). These recommendations are designed to be implemented without requiring new legislation or the acquisition of expensive new equipment such as a computer. However, because both computerization and legislation are relevant to improving practices in this area over the longer run, we conclude this chapter by addressing these topics in Sections D and E.

A. Imposing a Fine Sentence

In this section, our focus is on what is said and done in court at the time of sentence. Our recommendations reflect our view that utilization practices--the decisions concerning whether to impose a fine, in what amount, over what payment period, and what to tell the defendant at the time the fine sentence is announced--are closely related to the effectiveness of the fine as measured by success in col-

lecting it. To some extent this topic involves difficult questions of sentencing policy: how to choose between the fine and another sentence. While we feel there is scope for expanded fine use in many courts, that is not the thrust of these recommendations. Rather, these recommendations are directed at specific actions which can be taken at the time a fine sentence is considered or imposed, regardless of the breadth of a court's policy regarding the types of cases in which a fine is appropriate.

Recommendation 1. WHEN A FINE IS IMPOSED, THE COURT SHOULD SET THE AMOUNT AT A SUM WHICH THE DEFENDANT CAN REASONABLY BE EXPECTED TO PAY.

COMMENT: In cases involving offenses for which imprisonment is not an authorized sentence, it is clearly wrong to set a fine at an amount the defendant cannot possibly pay; the fine then either undermines the credibility of the court as an authority or simply becomes a precursor to jailing the defendant for default. Similarly, however, even when jail is an authorized sanction, if the sentencing judge imposes a fine (either as a stand-alone sentence or in a combination with another non-custodial sanction), he is implicitly ruling that imprisonment is not a desirable option. If the fine is not simply to be the start of a lengthy process leading to default and possible imprisonment, it must be set at a sum the defendant can pay. It is not necessary that he be able to pay it at once or without incurring some financial hardship--fines are, after all, for punishment. The objective should be to set an amount which constitutes a meaningful punishment taking into account the gravity of the offense, the offender's prior criminal record, and his financial circumstances. As noted earlier,

this implies departing from a system of set tariffs and more focus on individual cases. For practical purposes, it means that court should take account of two types of information in setting fine amounts:

(a) Information About the Offender's Means. As noted in Chapter III, some judges routinely obtain approximate information about defendants' financial circumstances by asking them a few questions prior to imposing sentence. Sometimes additional information is available through routine police, pretrial services agency, or probation reports. Conceivably, further information could also be obtained from defendants or their families, but even that which is now available in most courts can be useful in setting fine amounts and terms of payment. All too often, however, no attention whatsoever is given to the offender's specific financial circumstances, and rigid tariff systems make it likely that some poverty-stricken defendants are fined more than they can possibly pay, while some more affluent defendants are given fines that are meaningless as punishment. Both results undermine the fine's effectiveness as a sanction.

(b) Information About the Total Sum to be Paid. Very often other monetary penalties (restitution payments, court costs, penalty assessments, probation fees) are also imposed on the fined offender. From the defendant's perspective, it is difficult to distinguish among these, especially when he must pay the total amount at the office of the court clerk. It is unlikely that he will know (or care) precisely how the money he pays is allocated among different funds. In imposing a fine when other monetary sanctions are also imposed, the judge must take account of the total sum of all monetary sanctions in setting the fine amount. The relevant issue is the defendant's ability to pay the total sum.

Recommendation 2. WHEN A JUDGE ANNOUNCES A SENTENCE IMPOSING A FINE, THE DEFENDANT SHOULD BE INFORMED THAT PROMPT PAYMENT IS EXPECTED, SHOULD BE TOLD WHERE TO PAY THE FINE, AND SHOULD BE INFORMED OF THE CONSEQUENCES OF NONPAYMENT.

COMMENT: The way in which a fine is announced in court can have a significant effect on the defendant's perception of the sentence's meaning and on his behavior in paying (or not paying) the fine. The first consideration is clarity: it is not uncommon for a fined defendant to be totally bewildered as to when, where or how to pay it, or what will happen if he does not do so immediately. Some judges try to deal with this problem through a short colloquy with the defendant. For example, the judge may ask the defendant how much he can pay "immediately" or "today," and then, if the defendant indicates difficulty in immediate payment, follow up with further questions aimed at getting the defendant's agreement to a short period--a month or less, if possible--for payment of the full balance. Such a colloquy, which should include directions to the defendant concerning where to go to pay the fine, can serve several purposes: it emphasizes that the court is serious about collecting the fine; it makes the defendant an active participant in setting the time within which full payment is to be made; it provides an opportunity for clearing up any confusion in the defendant's mind about where and how to pay; it enables the judge to adjust the fine if special circumstances exist; and, finally, it puts the defendant on notice as to the consequences of nonpayment. The judge may also direct the fined offender to the office of the administrative staff responsible for fine collection. Particularly if it appears there may be a problem collecting the fine, early involvement of a fines office seems sensible.

It is critical, however, that judges and fines office staff have a clear understanding of each other's roles, and that the scope and limits of the staff's discretion be clear to all (see Recommendation 8, below).

Recommendation 3. IN IMPOSING A FINE, COURTS SHOULD CONSIDER THE USE OF INCENTIVES DESIGNED TO ENCOURAGE PROMPT PAYMENT. WHERE SUCH INCENTIVES ARE EMPLOYED, THEY SHOULD BE COMMUNICATED TO THE DEFENDANT AT THE TIME OF SENTENCE.

COMMENT: Although some American courts use techniques designed to spur fined offenders into paying, surprisingly little attention has been given to this. Effective use of incentives at the time sentence is imposed may be helpful in collecting fines without need for enforcement action and, if such action is necessary, in enabling it to be undertaken swiftly. Consideration of three such techniques seems especially useful:

(a) Immediate partial payment. Most persons, regardless of economic status, have some money with them when they appear in court. By conducting a brief colloquy at the time of sentence (see Recommendation 2), the judge may be able to set a reasonable sum for the offender to pay immediately, leaving less than the full amount to be paid later. This also reinforces the idea that the court means business in imposing the fine.

(b) Surcharges. Although it is common practice for commercial enterprises to charge interest for late payment of money owed, relatively few courts do this. Imposing surcharges (e.g., a set amount for each week or month the payment is overdue) seems reasonable because delayed payments can mean increased administrative costs. For surcharges to be effective as incentives, however, the court must inform

the defendant, at the time of sentence, of the additional costs (as well as other possible consequences) resulting from nonpayment.

(c) Fine in combination with suspended sentence. If a fined offender knows the consequences of nonpayment are likely to be more onerous than the burden of paying the fine, it will be an incentive for prompt payment. One way to frame the choice is to sentence the offender to both a fine and another sentence (e.g., jail, community service) and to suspend the other sentence on condition that the fine is paid within the time established. For the suspended sentence to be effective as an incentive, however, the court must be prepared to execute it if the offender defaults. Idle threats are not likely either to improve a court's payment record or to enhance its credibility in general.

Recommendation 4: WHEN FINED OFFENDERS INDICATE THAT THEY CANNOT PAY THE FULL AMOUNT AT ONCE, THE COURT SHOULD GIVE THEM A REASONABLE TIME TO PAY. HOWEVER, EXCEPT IN UNUSUAL CIRCUMSTANCES, LENGTHY PAYMENT PERIODS SHOULD BE AVOIDED.

COMMENT: Particularly if fines are used as alternatives to incarceration, some fines are likely to produce economic hardship. Intended as punishment, they are expected to "hit the offender in the pocketbook," and to make an impact on his financial well-being. Accordingly, when the fine is for a substantial amount in relation to the means of the offender, the offender should be given a reasonable time to pay. Obviously, the length of time should differ depending on the resources legitimately available to the offender, but ordinarily the fine should be set at an amount that will not require a long time to pay. In most cases, this probably means immediately or within a month. The short period of payment puts some urgency on the matter, and also

gives the offender an opportunity to place the entire affair behind him quickly. There is fragmentary evidence from research in both Britain and the United States that setting relatively short time periods for payment is more likely to lead to full payment than using lengthy periods and installment payments.

B. Collecting and Enforcing Fines

As we noted in the preceding section, the ways in which a fine sentence is imposed are essentially the responsibility of the judge, but they can have a significant effect on the success of subsequent collection and enforcement efforts, which are primarily the responsibility of court administrators. There are also important relationships between what happens in a court's fines office and what happens in the courtroom. Effective collection and enforcement techniques can reinforce the credibility of the fine as a sentence and the court as a source of authority, while ineffectual techniques can undermine both. Although the day-to-day collection and enforcement work is mainly administrative and clerical, judges have important duties in this area too. It is they who must decide what to do in the most difficult cases of nonpayment. The recommendations in this section deal mainly with aspects of court management, but they reflect an underlying premise that administrative problems are closely related to courtroom activities and that close working relationships between judges and senior administrative staff are essential for effectiveness in this area.

Recommendation 5. THE COURTS SHOULD UTILIZE COLLECTION METHODS THAT MAKE IT CONVENIENT FOR OFFENDERS TO PAY FINES.

COMMENT: Most American business establishments will accept personal checks when appropriate identification is furnished, and most will accept credit cards. Yet 30 of 126 courts contacted in our telephone survey would not take personal checks, and many that take them would do so only when the offender is known to the clerk and the bank is local. Only six of the 126 courts surveyed take payments by credit card. While both methods of payment are more likely to be convenient for middle class persons than for the poor who make up the bulk of many criminal courts' caseloads, the practices in this area reflect a widespread lack of concern about the convenience of the person who must pay. And, they reflect poor business judgment about the risks of accepting such methods of payment in contrast to the advantages of obtaining payment promptly. It is easy, for example, to check on the validity and account balance of a credit card. And, although payments via credit card may involve some additional expense, they could be covered by imposing a small surcharge. With some thought to the problems involved, taking into account local conditions, it should be possible for courts to devise a variety of methods for convenient payment. In addition to personal checks and credit cards, possibilities include the following:

- Payment at local banks (with possible computer link-up to the court);
- Payment at police stations and sheriff's offices;
- Payment at jails (especially important when persons have been jailed for default);
- Use of night deposit boxes outside the court's premises.

Recommendation 6. THE COURT SHOULD ESTABLISH AN INTERNAL ADMINISTRATIVE STRUCTURE WHICH HAS CLEAR LINES OF SUPERVISORY AUTHORITY AND ACCOUNTABILITY WITH RESPECT TO FINE COLLECTION AND ENFORCEMENT.

COMMENT: Both in the United States and in Britain, there is impressionistic evidence that fine collection works better when responsibility for performance of this function is plainly fixed--when supervisory duties and responsibilities are clear and when it is known that supervisors and staff will be accountable. Particularly in high volume courts, where many different individuals may be involved in fines administration, responsibilities and lines of authority are often blurred; it sometimes appears that no one really has responsibility for collection and/or enforcement. The lack of management structure in this area is manifested by the glaring lack of meaningful information on fines administration. While this problem will take time to remedy, an initial step would be to designate a single person--a senior member of the court's administrative staff--as the supervisor responsible for effective fine collection, and to develop goals and objectives to be met by that person's staff.

Recommendation 7: THE COURT SHOULD DEVELOP AND UTILIZE PROCEDURES FOR IDENTIFYING DEFAULTERS PROMPTLY AND FOR INITIATING ACTION IN THE EVENT OF NONPAYMENT. NON-COERCIVE MEASURES (e.g., REMINDER LETTERS, PHONE CALLS) SHOULD BE USED PRIOR TO ISSUANCE OR SERVICE OF A WARRANT.

COMMENT: If the fine is to have credibility as a sanction, the court must have the capacity to act quickly when an order to pay is flouted. Recent British research has highlighted the importance of prompt identification of defaulters and prompt action once that

identification is made (Softley and Moxon, 1982: 9, 10; Working Group on Magistrates' Courts, 1982: 9.5, 9.2). Our own study points to a similar conclusion. Even in courts with high case volumes and manual record-keeping systems, it is not overly difficult to set up "tickler" systems that rapidly identify defaulters. Every court should have such a system and should also have clear procedures or guidelines for taking action in the event of default.

The harder issue is what sort of action should be taken: should the court simply issue a warrant for the defendant's arrest and leave it to the police or sheriff to bring the offender before the court, or should the court itself attempt to make some contact with the defaulter? One consideration is cost: from the court's perspective it is probably simpler and cheaper to issue a warrant. However, that approach may be more cumbersome and expensive from an overall system perspective because it involves other agencies. These are typically police forces and sheriff's departments, neither of which are likely to give high priority to serving such warrants. There are indications from research in England and the United States that collection efficiency is improved if the court itself makes some type of initial contact with defaulting offenders, through reminder notices and perhaps follow-up telephone calls, before resorting to warrants.

Recommendation 8. COURT STAFF RESPONSIBLE FOR ADMINISTRATION OF FINES SHOULD BE GIVEN DISCRETION TO EXTEND PAYMENT DUE DATES AND DEAL WITH SPECIAL CIRCUMSTANCES, WITHIN GUIDELINES AND SUBJECT TO APPROPRIATE SUPERVISION.

COMMENT: This recommendation is a corollary of Recommendations 6 and 7. It reflects our view that effective fine collection is enhanced

when those responsible for collection establish some kind of personal contact with offenders, act swiftly in cases of default, and exercise their judgment and experience in appropriate situations. We were repeatedly told during the course of our research that personal contact is essential to successful collection, and in some jurisdictions, a fines enforcement officer has considerable discretion regarding what action to take when an offender defaults. Although unchecked administrative discretion can lead to abuse, general guidelines can be established for the exercise of discretion. For example, staff could be given authority to extend a payment due date once, for a period of up to two months, upon a showing of good cause, without referring the matter to a judge. Although a judge's involvement is probably desirable when remission of a portion of the fine is the issue, the recommendation of an experienced clerk--based on questions asked of the offender concerning his financial circumstances--can save time and contribute to a fair result. Conceivably, a senior administrative officer could be given discretion, within very clear parameters, to remit part of a fine (or up to a certain amount) under some circumstances. In most jurisdictions, however, the exercise of such administrative discretion over amounts to be paid probably requires statutory changes.

Recommendation 9: WHEN A FINED OFFENDER IS BROUGHT BEFORE THE COURT BECAUSE OF FAILURE TO PAY, THE JUDGE SHOULD INQUIRE INTO THE REASONS FOR THE DEFAULT. WHERE APPROPRIATE, AN EXTENSION OF TIME SHOULD BE GRANTED, BUT THE COURT SHOULD NOT ROUTINELY GIVE REPEATED EXTENSIONS OF TIME TO PAY.

COMMENT: Sometimes, particularly if the original sentence provided for a jail or work program alternative in the event of default, a judicial hearing on the reasons for the default and the financial circumstances of the offender may not be required by law. Nevertheless, such hearings seem to us to be sound practice when a default results in the offender being brought back before the court. If a fine was considered the appropriate penalty in the first instance, then reasonable efforts should be made to carry out that sentence. If the fine was set at an amount the defendant reasonably could be expected to pay (see Recommendation 1), then it is appropriate to give the defendant an opportunity to explain why he did not, or could not, do so. In some circumstances (e.g., loss of a job), an extension of time (or reduction of the amount) may be appropriate, but courts should grant extensions only when there is a clear justification and a good likelihood that it will result in payment. The role of the administrative staff in relation to the judge is important here: if the staff has some discretion in this area (see Recommendation 8), it can provide the judge with information and recommendations that will be useful in considering requests for modification of the original sentence.

Recommendation 10: IN APPROPRIATE CASES, AND WHERE STATUTES AUTHORIZE SUCH ACTION, COURTS SHOULD CONSIDER USING SANCTIONS OTHER THAN JAIL WHEN AN OFFENDER DEFAULTS.

COMMENT: The ultimate threat in fine enforcement has always been jailing. As we noted in Chapter IV, the threat alone is often sufficient. When an offender in default faces the real likelihood of spending time in jail, a "miracle of the cells" often produces the money

that is owed remarkably rapidly. There is also evidence that the threat of imposing other enforcement sanctions may have similar effects. Because the threat is only effective if it is clear to offenders that the sanction will actually be imposed, it is worth considering whether the other alternatives can be as effective as jail, and perhaps less costly. Two major types of sanctions should be considered as alternatives to jail for fined offenders who default, when neither an extension of time to pay nor a reduction in the fine amount appears appropriate:

(a) Distrainment of property. Nine American states have statutes that explicitly authorize the sale of goods belonging to an offender who has an unpaid fine balance (see Chapter IV, footnote 16 and accompanying text), and it is possible that the statutes of other states may permit such seizure and sale. Although American court administrators often feel that it is too difficult to recover small fines through such procedures, there has been a considerable upsurge of interest in this "distress warrant" approach in England in recent years. Preliminary research indicates that distress can be an effective enforcement technique, at least in some cases. In England, distress warrants are usually executed by bailiffs who are private businessmen under contract to the court. The bailiffs seldom actually seize and sell the offender's goods, but it is clear that they have the authority to do so. A visit from a bailiff often provides a strong incentive for prompt payment of the unpaid balance plus any surcharges, a percentage of which is taken by the bailiff as a fee. There are some risks in using such a system, whether the bailiff is a private businessman or an officer of the court, but the English experience suggests the dangers can be controlled through monitoring the bailiff's activities.

(b) Work Programs. If fines have been set realistically (see Recommendation 1), offenders should be able to pay them. Sometimes, however, a fined offender will lose his job or suffer some other unexpected setback. More often, offenders appear to be careless with their money or forgetful about their fines obligation. For many of these persons, providing the choice of "paying off" a fine sentence through either labor or money may be a sensible enforcement strategy. Existing community service programs could be the vehicle for their labor, or new programs (like Delaware's Work Referral Program) could be set up. In some states, statutory changes might be necessary to enable judges to use work orders as a sanction for default, but in others this could be done via an alternative sentence or conditional discharge order at the time of original sentence.

Two other alternatives are worth exploring but they probably have more limited utility than distraint and work programs:

(c) Attachment of Earnings. The principal difficulty with this remedy is that fine defaulters are often unemployed or marginally employed. Additionally, in some states the procedures for garnisheeing wages can be very cumbersome. There may be cases, however, where garnishment (or the threat of it) may be effective, and--particularly if the court staff obtains information that suggests the offender has a relatively stable work situation--it may be appreciably more efficient and less costly than using jail as a sanction.

(d) Driver's License and Registration Suspensions. Suspension of driver's licenses and automobile registration is a common penalty in some states, but only for motor vehicle offenses. It is not clear, however, whether there are legal impediments to using such suspensions

in cases involving other types of offenses. Given the integral role of the automobile in American society, the threat of depriving someone of the privilege of using a car could provide a useful incentive for prompt payment of an unpaid fine, in much the same way as the risk of loss of property provides such an incentive when a distress warrant is issued. A serious problem with this approach, however, arises when, despite the threat of suspension, the fine payment is not forthcoming. Actual suspension as an alternative punishment may result in increased numbers of people driving without licenses or driving unregistered vehicles. Thus caution should be used in considering broader use of this enforcement method.

All these alternatives to jail as a sanction for default hold some promise, at least for particular categories of cases. Distrainment of property and work alternatives especially warrant experimentation. They are widely applicable, and more humane than jail; they are likely to be less costly than incarceration, and their use should relieve pressure on jail over-crowding; and simply the threat of their imposition may be effective in securing payment. Nevertheless, even an enforcement strategy that uses all these techniques may still need to rely on jail as a "last resort" for defaulters who do not respond to other sanctions; but the development of a broader range of sanctions gives the court greater flexibility and should enable it to use jail only when it is clearly necessary.

Recommendation 11: THE COURT SHOULD DEVELOP AND UTILIZE AN INFORMATION SYSTEM THAT REGULARLY GIVES COURT MANAGERS AN UPDATED OVERVIEW

OF THE STATUS OF ACCOUNTS AND PROVIDES RELEVANT DATA ON TRENDS AND PROBLEMS WITH RESPECT TO FINE UTILIZATION, COLLECTION, AND ENFORCEMENT.

COMMENT: With few exceptions, American courts do a very poor job of collecting and using management information about fine use, collection, and enforcement. Although most courts keep adequate records of individual fine accounts, very few have developed systems for aggregating and analyzing the data in these records. As a result, they know very little about the number of fine sentences or the total amounts imposed, they cannot gauge the effectiveness of collection efforts, and they have no reliable way of identifying the type of cases that pose particular collection and enforcement problems or of learning what enforcement strategies work well.

If the fine is to be used effectively as a sanction, it is important to improve management information systems substantially. The basic building blocks of such a system already exist in every court, in the individual case records. From these case records it is possible--without great difficulty--to develop a fines management information system that contains six basic types of data:

- a) Sentences imposed - data on the number and proportion of different sentences imposed by conviction charge, including combination sentences.
- b) Inventory information - data on the total number of open fine accounts pending in the court at any time, and the age and amounts of these accounts.
- c) Input/Output information - data on the number of cases in which fines have been imposed during a period and the amounts involved, and on the number of accounts closed and monies received during the same period.
- d) Effectiveness in collecting fines - data on the number and proportion of cases in which fines have been fully collected within specific periods following imposition (e.g., 30 days, six months, one year); data on the total dollar amount of fines imposed that are collected.

e) Processing times and procedures - data on the length of time it takes to collect fines, on the number (and age) of cases in which particular types of enforcement procedures are used, and on the results of those procedures.

f) Identification of problem cases - lists of individual cases in which accounts have been pending without payment for more than a particular period of time, thus indicating that some type of action (e.g., reminder letter, telephone call, issuance and service of warrant) is needed.

Collection of these types of statistical data can be done easily in a manual system and should be even simpler in an automated system. The most time-consuming part is obtaining the initial inventory of pending accounts, but such an inventory is clearly an essential ingredient for any court that seeks to conduct its fiscal affairs in a business-like manner. Once the initial inventory is made, it can be updated periodically (e.g. at the close of each month), using working documents to furnish the information. The availability of such information, and its analysis at regular intervals, will enable the court's managers to address issues that cannot otherwise be considered. For example, it should enable the following fundamental questions to be answered:

- What is the total pending caseload of open fine accounts?
- What is the monthly inflow of new accounts?
- How many accounts are closed per month? Is the caseload increasing or decreasing?
- How many of the newly fined offenders pay promptly, without any type of enforcement action being necessary?
- Of those that do not pay promptly, how many pay after some specific type of enforcement action (e.g, reminder letter, telephone call, warrant issued, default hearing, etc.)?
- What are the types of cases/offenders that appear to cause particular problems in collection, with respect to which new techniques may be needed at time of sentence or in the collection process?

- Overall, how effective is the court in collecting fines?¹

Recommendation 12: THE COURT SHOULD USE A VARIETY OF TECHNIQUES, INCLUDING INDEPENDENT AUDITING OF ITS RECORDS, TO MONITOR ITS COLLECTION AND ENFORCEMENT EFFORTS.

COMMENT: Development of a simple but reliable management information system (see Recommendation 11) is a vital step toward developing a capacity for effective management of fines administration, but other approaches can also be employed to help ensure the efficiency and integrity of a fines collection system. Thus, for example, periodic spot checks of fine cases and accounts records can be made by senior staff. An independent accounting firm (or appropriate staff from the municipal, county, or state government) can be asked to make a periodic audit of the accounts, and to recommend specific procedures for handling money. And, of course, senior staff can analyze management information reports on a regular basis, using them to identify problem areas and spot trends that suggest a need for corrective actions.

C. The Process of Formulating Court Policy Toward the Use of Fines

In many courts, the use of the fine (and its relation to other dispositional alternatives) is rarely discussed among judges or between

¹ Researchers at the British Home Office have suggested the use of an "accounting ratio" to measure the performance of courts in collecting fines and to permit comparison of the performance of different courts. This ratio may be expressed as $A = B/C+D$, where A = the accounting ratio; B = the amount collected during a given quarter; C = the amount imposed during that quarter; and D = the arrears (amounts imposed but not collected) brought forward from the previous quarter (Softley and Moxon, 1982: 2, 13).

judges and the court's administrative staff. By the same token, the administrative problems of fine collection often receive low priority from senior administrators and are rarely the subject of discussions between judges and court staff. Yet, as we have emphasized, there are important links between fine imposition and enforcement. There is also obvious need for improved communication between judges and administrators with respect to what happens (and what should happen) in the different stages of the overall process.

Judges and court staff are not the only persons involved, of course. Sentencing decisions usually involve prosecutors, defense lawyers, and sometimes a probation service. And the impact of sentencing decisions and enforcement practices may be felt by the police, by correctional authorities, and by others, as well as by individual defendants. The complexity of the process and the fragmentation of responsibilities and functions points to a need for judicial leadership, for improved ways of formulating and communicating policy, and for better generation and dissemination of information about policy and practice.²

²Although policy regarding fine use is primarily a matter for individual local courts and criminal justice agencies, there are also important relationships between the state and local levels. Sentencing at the local trial court level is done within a framework of statutes and case law established mainly by a state's appellate courts. And state-level administrative policies concerning fine enforcement and collection of statistical data can significantly effect local policies. The recommendations in this section reflect a view that it is important for judicial leaders--administrators as well as judges--at both the local and state level to take the initiative in making the fine a more meaningful and effective sanction.

Recommendation 13: JUDGES AND POLICY LEVEL ADMINISTRATIVE STAFF SHOULD MAKE A CLEAR COMMITMENT TO EFFECTIVE FINE USE AND ENFORCEMENT.

COMMENT: It is essential that courts address the question of what in their view, constitutes effective use and enforcement of fines. At the local level, this means that the key participants in the court's policy process--judges and senior administrative staff--should examine the court's existing policies and develop clear and coherent fining policies. Further, there should be a commitment, by both judges and senior administrators, to effective implementation of such policies. It is the judges who have the responsibility for sentencing decisions; particularly if fines are to be used as an alternative to short-term incarceration, it is they who must be willing to experiment with broader use of the fine. It is the judges, too, who ultimately must deal with the most difficult enforcement issues when (as will inevitably happen) some defaulters are brought back before the court. Senior members of the court staff, in particular, the clerk of the court and/or court administrator, must be willing to make fine collection and enforcement a priority, and to organize their efforts to reflect this priority. The chief judge and the senior court administrators--the persons who constitute the executive component of the court--have especially critical leadership roles in establishing a court's commitment to effective fine use and enforcement by creating and implementing policies aimed at improving effectiveness.³

³Similarly, at the state level, it is the Chief Justice and the State Court Administrator who have critical roles in encouraging such commitments in courts throughout the state. If they indicate that effective fine use and enforcement is important, this message is likely to be heard and acted upon at the local level.

Recommendation 14. COURTS SHOULD ESTABLISH MECHANISMS FOR CONSULTATION AMONG JUDGES, COURT STAFF, AND OTHER RELEVANT PARTICIPANTS, TO FORMULATE POLICIES AND DEAL WITH SPECIFIC PROBLEMS OF FINE USE AND ENFORCEMENT.

COMMENT: Although the decision as to mode and severity of sentence in an individual case is formally the responsibility of the judge, there are ways in which consultative mechanisms can contribute significantly to the soundness of sentencing decisions and to the overall effectiveness of a court's practices. For example, it should be helpful for judges handling criminal matters to be generally familiar with the prosecutor's views with respect to sentencing alternatives in categories of cases for which the fine is a possibility. It would be useful for both judges and prosecutors to be aware of corrections officials' views about the impact upon jail conditions of the types of sentencing choices made. And it would be valuable for all participants in the process to have an understanding of the problems that court staff encounter in their collection and enforcement activities, and of how these problems are dealt with by the administrative staff. Discussing such problems suggests development of relevant information to identify the elements of the problems (see Recommendation 11, above), and the existence of mechanisms for consultation should provide an incentive to produce such information. It should also contribute to improved communication inside the court and between the court and other agencies. Such mechanisms for consultation need not have fine practices as their only subject; but, whether or not such mechanisms already exist (and many courts already have "user committees" that meet periodically), fine use and enforcement should be an important item on the agenda.

Recommendation 15. COURTS, IN CONSULTATION WITH OTHER PARTICIPANTS, SHOULD ESTABLISH STANDARD PROCEDURES TO BE FOLLOWED AT THE TIME OF SENTENCE AND IN SUBSEQUENT COLLECTION AND ENFORCEMENT STAGES.

COMMENT: Not only do American practices with respect to fines vary widely from court to court, they also vary from judge to judge and from clerk to clerk in many multi-judge courts. Without stifling innovation or impinging upon individual judges' discretion and responsibility, it should be possible for courts to establish some common approaches to the three major stages of fining: imposition of the sentence and setting its amount; administrative measures to be taken upon failure of a fine debtor to make timely payment; and in-court enforcement proceedings. To some extent, the details of these approaches will vary from court to court. The details of what is done are probably less important than the process of addressing the problem: there is little excuse for allowing arbitrary and inconsistent practices to continue unchecked within a court without examining them.⁴

D. Computerization

As we noted at the beginning of this chapter, many changes in fine use and enforcement can be made by local courts without the need for expensive equipment, major reorganization, or new legislation.

⁴In some states, the State Court Administrator's Office has played an important role in developing standard procedures. While variations must be taken into account in establishing such procedures, this is an area in which state level involvement can be helpful. This is particularly true with collection and enforcement procedures. A State Court Administrator can provide technical assistance, arrange for the dissemination of information about good practice, and exercise leadership in developing statewide minimum standards for record-keeping and statistical data collection.

However, over the longer run, it may be useful to consider what role computerization and changes in statewide legislative policy might contribute to sound sentencing practices in courts that rely more heavily on monetary penalties. Therefore, to conclude our discussion, we suggest some directions for future thought about these issues, recognizing that their political and fiscal implications are very complex and, perhaps, controversial.

In both the United States and England, computerization in the courts has tended to develop piecemeal, in a rather haphazard fashion. Although millions have been spent for computer hardware and software, these purchases have often been made without adequately thinking about the uses of automation in a particular court, the needs of different users, or the costs of servicing the system, training staff, storing data and re-designing the workflow. Very often, the computer systems installed in courts have been little more than expensive automated versions of pre-existing manual systems that themselves did not meet the needs of court managers.

The use of computers to deal with fine collection and enforcement appears to be no exception. As we noted in Chapter III, data collected in this study suggest that courts with automated systems do not appear any more effective in collecting fines than courts that use manual systems (nor do they seem to obtain or use better management information). Recent English research has produced similar findings (Softley and Moxon, 1982: 7). Yet it seems clear that computers can be of great value in the sound administration of a court (or court system) that makes extensive use of the fine and other monetary penalties. A high volume of work is involved; much of it is routine and repetitive;

numerous arithmetic calculation are needed and a high standard of accuracy is essential; case files must routinely be sorted by payment status and other characteristics; and management information reports and other statistical data are required on a regular basis. These are circumstances for which the computer is ideally suited.

With the tremendous advances that have taken place in computer technology in recent years, the purchase of a mini-computer or micro-computer is within the financial reach of many individual courts.⁵ But affording the computer is only part of the problem; the harder issues involve obtaining adequate programming for the full range of uses and needs, ensuring adequate data storage capacity, re-designing internal workflow procedures to utilize the computer, developing sound back-up systems for use during computer "down-time," and providing adequate training for the staff that will use the computer. Both the initial capital outlay and the on-going cost of operation of an automated system are likely to be higher than are initially anticipated unless very careful planning is done. Nevertheless, the savings produced by an effective automated system can be substantial over a period of time, and the computer has the potential to enable a busy court to manage fine collection and enforcement much more efficiently than it can with a manual system.

Recommendation 16. WHERE FEASIBLE, COURTS SHOULD USE COMPUTERS THAT PERFORM ROUTINE FUNCTIONS OF FINES ADMINISTRATION AND THAT PROVIDE RELEVANT MANAGEMENT INFORMATION AND STATISTICAL DATA.

⁵This technological change permits computerization to be undertaken by an individual court; it also permits court systems to consider implementing either a decentralized or a more centralized computer system.

COMMENT: Although computers are especially appropriate for many aspects of administrative work on fine collection and enforcement, a court manager should not think about computerization for fines management in isolation from the full range of administrative functions for which a computer may be appropriate in a court. However, for some courts, it may make sense to follow a "modular" approach, and to focus first on developing and using a distinct module exclusively (or primarily) for fines administration. Some modules designed for similar purposes (typically micro computer systems) are already in existence, but it is our sense that their application in this area would require further work that must take account of the diversity of courts, court procedures and nomenclature. Among the functions that might be performed by a computer in a high volume court that uses fines extensively are the following:

- Record-keeping in individual cases (including recording of the offender's name, address, conviction charges, fine amounts, other sanctions imposed, amounts paid in by offender, balance owed, etc.);
- Preparing and issuing receipts when payment is made;
- Preparing reminder letters and other notifications when time for payment has passed;
- Preparing warrants and other documents for use by court and correctional agencies in event of default;
- Aggregating relevant data from individual court records, to provide management information and statistical data (see Recommendation 11, supra).

E. Legislation

There is ample evidence that legislation dealing with the penalties for offenders can have a major effect on judges' sentencing decisions and on the size of prison and jail populations. In America, it seems clear that the revision of many such laws during the 1970s--most notably setting mandatory minimum terms for certain offenses and establishing determinate sentencing schemes of various types--has led to substantial increases in prison and jail populations in many localities. By contrast, a major revision of the German Penal Code in 1968, which provided that custodial terms of less than six months were to be replaced by fines (or probation) in all but exceptional cases, produced a dramatic reduction in reliance on short-term incarceration (see, p. 4 and p. 26, supra).

If policymakers and legislators are seriously concerned about the problems of jail overcrowding and about the human and fiscal costs of heavy reliance upon incarceration as a criminal sanction, the experience of West Germany provides an obvious model for legislative change. The current West German legislation has two main components--the day fine system plus a strong policy against short-term imprisonment. Adoption of legislation modelled on the West German approach would, however, be a major departure from existing law and practice in American jurisdictions. In the absence of clear evidence of the feasibility of such a system in the United States, we are hesitant to recommend legislation along these lines; however, it seems desirable to encourage innovation and experimentation with the day fine concept in American courts. In some states, existing legislation may already permit this; in others some statutory changes may be required to enable the experimentation.

Additionally, it seems desirable to encourage legislative attention to two other generally neglected aspects of the use of the fine as a sanction: the mechanics of administration and the distribution of revenue from fines.

Recommendation 17. STATES SHOULD ENACT LEGISLATION THAT WILL ENCOURAGE BROADER USE OF FINES AND WILL ENABLE COURTS TO UTILIZE A "DAY FINE" APPROACH TO FINING OFFENDERS.

COMMENT: State penal codes and other statutes affecting the use of fines vary widely, and it is impossible to make recommendations that will be applicable to all jurisdictions. However, the following elements might be considered for inclusion in a legislative package aimed at broadening the use of the fine and reducing disparity in impact upon affluent and poor offenders:

(a) Higher maximum fine amounts. Although current fines in most lower courts appear to be well below existing fine maxima, in some states statutory ceilings for selected offenses seem relatively low (e.g. Vermont's maximum of \$500 for auto theft and \$1,000 for possession of a large amount of narcotic drug). Particularly when the offender is a person of substantial means, the existence of a low statutory maximum for some offenses may result in a judge declining to impose a fine because it would not be felt or seen as a meaningful punishment. For a broadly applicable day fine system to have a good chance of working, it is likely that higher ceilings in fine amounts will be needed, thus enabling courts to impose fine sentences on all offenders convicted of a given charge that are meaningful punishments for affluent offenders as well as for those experiencing varying degrees of poverty.

(b) Requirement that judges take account of offenders' means in imposing a fine. Although the Swedish and West German day fine systems utilize rather highly structured procedures for deciding upon the amount of the fine, it would be premature to suggest a single specific approach in American courts. At this point, our need is for experimentation and documented information about how different approaches work. One critical element, however, is a movement away from a system of set tariffs and toward a system that recognizes that the impact of the fine as a punishment will vary depending on the economic circumstances of the offender.

(c) Broader scope for use of fine-alone sentences. As we noted in Chapter V, a number of states impose restrictions on the use of the fine as the sole sentence for some types of offenses. Although these restrictions may sometimes be of symbolic importance (since a sentencing judge often can suspend a jail sentence or probation order that is imposed in combination with a fine), their existence can affect attitudes and behavior. If a day fine system is introduced, it will be important to emphasize that the fine by itself is viewed as a meaningful punishment.

(d) Revision of statutes providing for flat "dollars-to-days" conversion of unpaid fine amounts into jail or work program time upon default. The "conversion rate" may be a problem in many jurisdictions. Historically, the starting point has been the amount of the unpaid fine balance, which could be "worked-off" at set amounts which were often very low (e.g., \$5 per day under the Texas law that was at issue in the Tate v. Short case decided by the U.S. Supreme Court in 1971). The result under the traditional tariff system of imposing fines has been

that poor people have ended up in jail when unable to pay the fine, while affluent defendants paid without difficulty. In contrast, under a day fine system in which it is possible for rich and middle class defendants to be fined very large amounts, under a flat dollars-to-days conversion system, they could face very long jail terms in the event of default. However, a key to developing an equitable response to default seems to lie within the procedures for establishing the amount of the fine under a day fine system. By adopting a two-stage approach, in which the fine is initially calculated in terms of units of punishment reflecting the gravity of the offense but not the means of the offender, it should be possible (with appropriate legislation changes where needed) to establish sanctions for default relating days of jail (or work) to the fine units that would be equitable and administratively feasible regardless of the means of an offender.

Recommendation 18. STATES SHOULD ENACT LEGISLATION DESIGNED TO ENCOURAGE MORE EFFECTIVE FINES ADMINISTRATION.

COMMENT: While it would not be desirable for states to establish rigid statutory "straitjackets" governing procedures for the collection and enforcement of fines, this is an area in which there may be some room for more uniformity, perhaps in the form of statewide "minimum standards" of acceptable practices. The fact that many courts that make heavy use of fines--e.g. municipal courts--are often local entities which are subject to little or no supervision by a state court administrator or other state-level authority makes this an especially tricky area. Nevertheless, consideration might be given to the following areas for possible legislative action:

(a) Requirements for regular audits. Courts, like other governmental agencies that handle public money, should be subject to periodic audits by an appropriate fiscal authority (e.g. state comptroller's office, local government comptroller, fiscal officer of state court administrator's office), to ensure that books are accurately maintained and that adequate procedures are followed in the handling of monies.⁶

(b) Authorization for State Court Administrators to establish basic standards or requirements for record-keeping and statistical reporting. At the present time, few states have any kind of comprehensive state-wide procedures governing the handling of money received in payment of fines and other monetary sanctions. Generally, each local court establishes its own practices. Some aspects of these processes might benefit from minimum standards and uniform practice. This is particularly true of procedures for handling the payment of money, maintaining accounts, and writing off fines when a defaulting offender cannot be located, and with respect to the production of management information and aggregate statistical data on fine imposition and collection. Where they are desirable, one way to move toward the development of such standards and procedures would be to authorize the State Court Administrator to develop them, acting in consultation with the courts that would be affected and with the state and local comptrollers or treasurers. Because collection procedures are closely

⁶We note, however, that auditing already appears to be a fairly regular procedure in American courts. Of the 126 courts we surveyed, 53 percent reported they were audited every year, another 22 percent every two or three years, and six percent reported being audited but less than every three years (19% of the respondents didn't know how frequently audits were conducted).

related to the judicial functions of imposing the fine and imposing sanctions upon defaulters, it is important for persons knowledgeable about court operations to be involved. Accounting expertise and an awareness of the resources and needs of the full range of diverse courts are also essential.

(c) Broader range of sanctions for default. Developing a range of sanctions for default is important both for effective fines administration and for encouraging broader use. The almost exclusive reliance on jail as a sanction for default means that judges and court staff have few options when faced with a defendant who is reluctant or unwilling to pay a fine. At a minimum, a state's statutes should authorize the full range of sanctions discussed under Recommendation 10, above: distress, work programs, attachment of earnings, and possibly suspension of drivers' licenses and automobile registrations. It may also be worth considering legislation that would establish a preference for use of these sanctions rather than jail.

Recommendation 19. STATES SHOULD REVIEW THEIR LAWS REGARDING COLLECTION AND DISTRIBUTION OF REVENUE FROM MONETARY SANCTIONS. THEY SHOULD SEEK TO ESTABLISH SYSTEMS THAT AVOID IMPOSITION OF IMPOSSIBLY HIGH FINANCIAL BURDENS ON OFFENDERS AND THAT TAKE ACCOUNT OF THE INTERESTS OF CRIME VICTIMS.

COMMENT: This recommendation reflects our sense that statutes providing for various types of monetary penalties have been enacted in most states with very little regard for their relationship with one another, and with little attention to their impact on offenders or on differently situated offenders. For example, as we pointed out in Chapter VI, imposition of flat assessments such as costs and penalty

assessments can create significant economic burdens for an offender even before the amount of a fine sentence is taken into account. If fines are to be more widely used, it will be important to address the problems posed by the very common use of these sanctions. Some kind of graduated scheme for imposing costs and penalty assessments--utilizing the same type of information that takes account of offenders' means needed to set fines--is one possible approach. Another approach would be to merge all of these sanctions into a single one that would take the offender's means into account in setting the total amount to be paid, and to establish more carefully thought-through systems for allocating the revenue obtained from payment. At the present time, the statutes governing revenue distribution are a hodge-podge that reflect competing fiscal, political, and correctional interests. They differ markedly from state to state, and even within a single state may differ considerably from municipality to municipality depending on the extent to which municipal courts are independent of state control. Any attempt to change laws regarding the imposition of fines and other monetary penalties and that affect the distribution of their revenue will have to take these legitimate but possibly conflicting political and revenue interests into account.

In view of the rapidly developing concern about crime victims, particular attention should be paid to the circumstances under which victims should receive funds resulting from the imposition of monetary penalties. It seems undesirable, for example, that a victim's interest in reparation for his loss or injury should be met only when the offender can be identified, is convicted, and has money or other economic resources with which to make restitution. It appears likely that fine

revenues can be used to address societal concerns about crime victims (including the victims of unsolved crimes) in a more equitable fashion than can be done through reliance on restitution alone. The recent trend toward enactment of penalty assessment statutes, with the revenue from the assessments earmarked for crime victim compensation funds, is a manifestation of legislative interest in this problem. Clearly, however, the enactment of such penalty assessment laws, in addition to all of the other monetary sanctions already in existence, is not a satisfactory answer. As we have discussed in the preceding chapter, a fresh look is needed at the entire legal and practical framework for the imposition of monetary sanctions and the allocation of the proceeds, particularly with an eye to considering how fines, community service and restitution might complement each other in an overall approach to punishment that attempts to (1) provide a wide range of sentencing options, (2) reduce reliance on short-term jail sentences, and (3) better meet the needs of crime victims.

APPENDIX A

REVIEW OF U.S. STATE STATUTES

All U.S. state statutes, including those of the District of Columbia were reviewed for relevant content: the criminal offenses for which fines are authorized as sentences, the amounts and collection procedures permitted, the responses to default that may be used, the provisions for the distribution of fine revenues, and other related issues. These legal provisions (current through 1980) were extracted from the statutes, recorded, and then coded to reduce the many specific laws into a standard format that would allow comparison. This appendix contains selected tables based upon those coded data. For a complete report, see Sichel, Working Paper #1, 1982.

Table A-1

Penalty Assessments Authorized
by State Statutes

| <u>State*</u> | <u>For Misdemeanor Convictions</u> | | <u>For Felony Convictions</u> | |
|---------------|--|----------------|-----------------------------------|----------------|
| | <u>Non-Violent</u> | <u>Violent</u> | <u>Non-Violent</u> | <u>Violent</u> |
| California | \$ 5 | -- | \$10 | -- |
| Connecticut | 15 | \$15 | 20 | \$20 |
| Florida | 10 | 10 | 10 | 10 |
| Indiana | 34** | 34 | 34 | 34 |
| New Jersey | 25 | 25-\$10,000*** | 25 | 25-\$10,000 |
| Virginia | -- | 15 | 15 | 15 |

* New York State added a penalty assessment provision (Section 60.35) in 1982 after collection of these data.

** Only for class A misdemeanors.

*** \$25 penalty for simple assault.

Table A-2

**Maximum Fines Authorized
for Embezzlement of \$6000**

| <u>Maximum Fine</u> | <u>States Stipulating that Maximum</u> | <u>(Number of States)*</u> |
|----------------------|--|----------------------------|
| \$ 500 | North Dakota, Vermont, West Virginia | (3) |
| 600 | Massachusetts | (1) |
| 1,000 | District of Columbia, Maryland, Mississippi, Oklahoma, Virginia, Wyoming | (6) |
| 2,500 | Ohio | (1) |
| 3,000 | Louisiana, Rhode Island | (2) |
| 5,000 | Iowa, Michigan, New Mexico, Texas | (4) |
| 6,000 | Kansas | (1) |
| 10,000 | Georgia, Illinois, Minnesota, Nevada, South Dakota, Utah, Wisconsin | (7) |
| 12,000 | Alabama, Arkansas, Connecticut, Florida, Hawaii, Indiana, Kansas, Kentucky Maine, Missouri, New Hampshire, New York, Oregon | (13) |
| 15,000 | Pennsylvania | (1) |
| 25,000 | Nebraska | (1) |
| 50,000 | Alaska | (1) |
| 100,000 | New Jersey | (1) |
| 150,000 | Arizona | (1) |
| No fine authorized | California, Colorado, Idaho, Missouri, South Carolina, Tennessee | (6) |
| No statutory maximum | Delaware, North Carolina | (2) |
| | | (51) |

* District Columbia included: N=51.

Table A-3

Statutory Provisions for

Satisfying Fines Through

Serving Jail Time and Performing Labor

States Having:

| <u>Dollar Value of Days</u> | <u>Fixed credit toward fine payment per day of confinement</u> | <u>Minimum credit toward fine payment per day of confinement</u> | <u>Fixed credit toward fine payment per day of labor</u> |
|-----------------------------|--|--|--|
| Under \$1.00 | - | - | Florida |
| 1.00 | Vermont; Wyoming | - | - |
| 1.50 | - | - | Iowa |
| 2.00 | - | Alabama; Utah | Alabama; Kentucky; West Virginia |
| 3.00 | Massachusetts | - | Minnesota |
| 3.33 | - | Iowa | - |
| 4.00 | - | Nevada | - |
| 5.00 | Illinois; Indiana; New Hampshire; Oklahoma; Rhode Island; Texas | Hawaii; Idaho; Maine; Tennessee | Kansas; New Mexico; Oregon; Tennessee; Texas |
| 10.00 | Connecticut; Missouri; Montana; Ohio | Arizona; Arkansas; Maryland; Mississippi | Arizona; North Dakota; Washington |
| 20.00 | - | New Jersey | Connecticut |
| 25.00 | Nebraska | Oregon; Washington | - |
| 30.00 | - | - | Delaware |
| 50.00 | - | Alaska | - |

Table A-4

Statutory Maximum Jail Confinement

For Default in Fine Payment

| <u>Statutory Maximum</u> | <u>Number of States</u> | |
|--------------------------|--------------------------------|-------------------------------------|
| | <u>For felony offenses</u> | <u>For misdemeanor offenses</u> |
| 1 month | 2 | 9 |
| 2 months | 2 | 2 |
| 3 months | 2 | 7 |
| 6 months | 11 | 8 |
| 12 months | 8 | 1 |
| | 25 | 27 |

Table A-5
The Fining of Indigent Offenders:
Special Provisions in U.S. State Statutes

| | State Statutes Which Contain Provision | |
|--|--|----------|
| | Number | Percent* |
| Prohibition on fine sentences in hardship cases | 5 | 9.8 |
| Prohibition on fine sentences where fine unlikely to be collected | 8 | 15.7 |
| Fine amounts may be tailored to offender's means (within statutory ranges) | 10 | 19.6 |
| "Indigent" default (in fine payment) distinguished from "willful" default | 21 | 41.2 |
| Indigent defaulters may be given additional time to pay or reduction in amount of fine | 21 | 41.2 |
| Indigent defaulters may have their fines excused | 16 | 31.4 |
| Prohibition on jailing indigents solely for default | 9 | 17.6 |
| Special limit on length of jail term served by defaulters who are indigent | 5 | 9.8 |

* District of Columbia included as state; N=51.

Table A-6
Maximum Fine Amount by Extent of Fine Authorization

| Extent of Fine Authorization | Modal Fine Maximum for Offenses Surveyed* | | |
|--|--|--|--|
| | Under \$1,000 | \$1,000-\$5,000 | Over \$5,000 |
| states that authorize fine-alone sentence for many offenses at least 19 out of 22 offenses surveyed) | Florida Minnesota Utah Vermont | Alabama Arkansas Connecticut Iowa Kansas New Hampshire North Dakota Oregon Texas | Arizona Delaware Hawaii Nebraska New Jersey North Carolina Pennsylvania South Dakota Wisconsin |
| states that authorize fine-alone sentence for most offenses 15-18 out of 22 offenses surveyed) | Louisiana Massachusetts Mississippi Nevada Rhode Island West Virginia | Alaska District of Columbia Maine Michigan New York | Washington |
| states that authorize fine-alone sentence or some offenses 14 or fewer out of 22 offenses surveyed) | California Idaho Kentucky Maryland Montana New Mexico Ohio Oklahoma South Carolina Tennessee Wyoming | Colorado Georgia Illinois Indiana Missouri Virginia | |

Offenses surveyed: Murder w/intent; criminally negligent homicide; armed robbery; purse snatch; burglary; assault; carrying concealed unlicensed handgun; burglary; criminal trespass; auto theft; petit larceny; criminal mischief; confidence swindle; prostitution; pimping, disorderly conduct; reckless driving; driving while intoxicated; driving while intoxicated 2nd offense w/in 12 months; sale of marijuana; possession of heroin; rape; embezzlement.

NOTES: Delaware, North Carolina, and South Carolina had offenses for which the law stated no maximum or that the amount is discretionary. These offenses were recorded in the over \$5,000 category since the fines could be virtually unlimited.

District of Columbia and North Dakota had the same number of fine maximums under \$1,000 and \$1,000-\$5,000. Hawaii had the same number of fine maximums \$1,000-\$5,000 and over \$5,000. When there were ties, the state was recorded under the higher category.

APPENDIX B

TELEPHONE SURVEY OF CHIEF CLERKS AND COURT ADMINISTRATORS

A telephone survey of 126 municipal courts and state- or county-funded limited jurisdiction and general jurisdiction felony courts in 21 states was undertaken to generate data on fine use, collection and enforcement in criminal cases other than parking and routine traffic cases. The specific courts were selected for their statutory as well as their geographic and jurisdictional diversity. The chief clerk or court administrator was interviewed by telephone by an interviewer from the Institute for Court Management.

This appendix contains a copy of the questionnaire, and a list of the courts included in the sample by type of court, location, jurisdiction population and number of judges handling criminal cases. It also contains selected tables based upon these questionnaires. For a complete report, see Mahoney et al., Working Paper #6, 1982.

Table B-1

Types of Courts Included in Sample, by Region*

| Type of Court | Region | | | Total |
|--|-------------------|-----------|-----------|------------|
| | Northeast-Midwest | South | West | |
| General Jurisdiction: Felonies Only | 6 | 8 | 10 | 24 |
| General Jurisdiction: Felonies, Misdemeanors, and Ordinance Violations | 19 | 4 | 5 | 28 |
| Limited Jurisdiction | 23 | 24 | 27 | 74 |
| TOTAL | 48 | 36 | 42 | 126 |

* For purposes of the survey, we are using three broad regions, composed of the following states in which courts were contacted:

Northeast-Midwest: Maine, Connecticut, New York, New Jersey, Ohio, Wisconsin, Minnesota, Iowa

South: Virginia, Tennessee, Georgia, Florida, Alabama, Arkansas

West: Oklahoma, New Mexico, Colorado, Wyoming, Washington, Arizona, California

Table B-2

Frequencies of Types of individuals responsible for deciding what action is to be taken and when in cases in which a defendant fails to pay a fine within the allotted time.

| | | | |
|--------------------------|------------|---|-----------|
| Judge | 70 | | |
| Combination | 24 | | |
| Clerk of Court | 15 | | |
| Other Court Staff Member | 3 | | |
| Other | 10 | | |
| Not Applicable | 2 | | |
| TOTAL | 124 | | |
| | | Judge and Clerk of Court | 8 |
| | | Judge and prosecutor | 5 |
| | | Judge and other court member | 2 |
| | | Judge, prosecutor, and clerk | 1 |
| | | Judge and sheriff | 1 |
| | | Judge and probation officer | 2 |
| | | Judge and motor vehicle dept. | 1 |
| | | Judge and Revenue Reimbursement Officer | 1 |
| | | Judge, court policy and statute | 1 |
| | | Prosecutor and probation officer | 1 |
| | | Clerk of court and parole/probation officer | 1 |
| | | Clerk of court and warrant officer | 1 |
| | | Clerk of court or court administrator | 1 |
| | | TOTAL | 24 |

COURTS INCLUDED IN THE SAMPLE

A. General Jurisdiction - Felonies Only

| <u>Court</u> | <u>Location</u> | <u>Jurisdiction Population</u> | <u>No. of Judges Handling Criminal Cases</u> |
|---------------------------------------|-----------------|------------------------------------|--|
| Circuit Court of Montgomery County | Montgomery, AL | 197,000 | 5 |
| Superior Court of Pima County | Tucson, AZ | 510,000 | 10 |
| Pulaski County Circuit Court | Little Rock, AR | 300,000 | 3 |
| Sebastian County Circuit Court | Fort Smith, AR | 90,000 | 2 |
| Sacramento Superior Court | Sacramento, CA | 810,000 | 13 |
| Los Angeles Superior Court | Los Angeles, CA | 7,000,000 | 55 |
| Denver District Court | Denver, CO | 600,000 | 8 |
| Boulder District Court | Boulder, CO | 250,000 | 2 |
| Superior Court of Hartford | Hartford, CT | 825,000 | 5 |
| Ninth Circuit Court | Orlando, FL | 520,287 | 8 |
| Twelfth Circuit Court | Sarasota, FL | 425,000 | 2 |
| Fulton County Superior Court | Atlanta, GA | 750,000 | 5 |
| Cobb County Superior Court | Marietta, GA | 294,000 | 2 |
| Mercer County Superior Court | Trenton, NJ | 307,863 | 4 |
| First Judicial District | Santa Fe, NM | 70,000 | 3 |
| Second Judicial Circuit | Albuquerque, NM | 400,000 | 7 |
| Albany County Court | Albany, NY | 285,000 | 2 |
| Monroe County Supreme Court | Rochester, NY | 750,000 | 7 |
| Franklin County Court of Common Pleas | Columbus, OH | 1,000,000 | 5 |
| Hamilton County Court of Common Pleas | Cincinnati, OH | 880,000 | 12 |
| Circuit Court of Richmond | Richmond, VA | 422,000 | 3 |
| King County Superior Court | Seattle, WA | 1,500,000 | 5 |
| Laramie County District Court | Cheyenne, WY | 70,000 | 2 |
| Natrona County District Court | Casper, WY | 71,856 | 2 |

B. General Jurisdiction - Felonies, Misdemeanors and/or Ordinance Violations

| <u>Court</u> | <u>Location</u> | <u>Jurisdiction Population</u> | <u>No. of Judges Handling Criminal Cases</u> |
|---|-------------------|------------------------------------|--|
| Circuit Court of Jefferson County | Birmingham, AL | 650,000 | 5 |
| Superior Court of Maricopa County | Phoenix, AZ | 1,500,000 | 11 |
| Superior Court/G.A. #3 | Danbury, CT | 150,000 | 2 |
| Superior Court/G.A. #16 | West Hartford, CT | 122,500 | 1 |
| Superior Court/G.A. #19 | Rockville, CT | 114,500 | 1 |
| Polk County District Court | Des Moines, IA | 325,000 | 12 |
| Linn County District Court | Cedar Rapids, IA | 169,000 | 4 |
| Blackhawk County District Court | Waterloo, IA | 130,000 | 10 |
| Debuque County District Court | Debuque, IA | 98,000 | 6 |
| Scott County District Court | Davenport, IA | 150,000 | 10 |
| Woodbury County District Court | Sioux City, IA | 100,875 | 2 |
| Kennebec County Superior Court | Augusta, ME | 100,000 | 2 |
| Cumberland County Superior Court | Portland, ME | 250,000 | 3 |
| Second Judicial District Court | St. Paul, MN | 485,000 | 6 |
| Fourth Judicial District Court | Minneapolis, MN | 1,000,000 | 7 |
| Olmsted County District and County Court | Rochester, MN | 100,000 | 3 |
| Superior Court of Essex County | Newark, NJ | 800,000 | 17 |
| Oklahoma County District Court | Oklahoma City, OK | 500,000 | 5 |
| 14th Judicial District Court | Tulsa, OK | 625,000 | 7 |
| Pottawatomie County District Court | Shawnee, OK | 43,134 | 3 |
| Davidson County Criminal Court | Nashville, TN | 500,000 | 3 |
| Shelby County Criminal Court | Memphis, TN | 1,000,000 | 8 |
| Fairfax County Circuit Court | Fairfax, VA | 600,000 | 9 |
| Spokane County Superior Court | Spokane, WA | 341,000 | 3 |

| <u>Court</u> | <u>Location</u> | <u>Jurisdiction Population</u> | <u>No. of Judges Handling Criminal Cases</u> |
|------------------------------------|-----------------|------------------------------------|--|
| Circuit Court of Dane County | Madison, WI | 300,000 | 4 |
| Circuit Court of Milwaukee County | Milwaukee, WI | 1,000,000 | 12 |
| Circuit Court of Kenosha County | Kenosha, WI | 125,000 | 3 |
| Circuit Court of Eau Claire County | Eau Claire, WI | 55,000 | 4 |

CONTINUED

3 OF 4

C. Limited Jurisdiction - Misdemeanors and/or Ordinance Violations

| Court | Location | Jurisdiction Population | No. of Judges Handling Criminal Cases |
|--|-----------------------|-------------------------|---------------------------------------|
| District Court of Jefferson County | Birmingham, AL | 650,000 | 3 |
| District Court of Montgomery County | Montgomery, AL | 179,301 | 2 |
| Birmingham Municipal Court | Birmingham, AL | 300,000 | 3 |
| Montgomery Municipal Court | Montgomery, AL | 197,000 | 1 |
| Maricopa County Justice Courts | Phoenix, AZ | 1,700,000 | 18 |
| Pima County Consolidated Justice Court | Tucson, AZ | 858,000 | 2 |
| Phoenix Municipal Court | Phoenix, AZ | 760,000 | 19 |
| Tucson City Court | Tucson, AZ | 350,000 | 7 |
| Fort Smith Municipal Court | Fort Smith, AR | 68,250 | 1 |
| West Memphis Municipal Court | West Memphis, AR | 29,500 | 1 |
| Little Rock Municipal Court | Little Rock, AR | 150,100 | 1 |
| North Little Rock Municipal Court | North Little Rock, AR | 65,000 | 1 |
| Sacramento Municipal Court | Sacramento, CA | 750,000 | 15 |
| San Francisco Municipal and County Court | San Francisco, CA | 630,000 | 11 |
| Los Angeles Municipal Court | Los Angeles, CA | 2,917,000 | 48 |
| Consolidated Fresno Municipal Court | Fresno, CA | 248,000 | 9 |
| Denver County Court | Denver, CO | 491,396 | 7 |
| Jefferson County Court | Golden, CO | 38,500 | 5 |
| Arapahoe County Court | Littleton, CO | 300,000 | 4 |
| Lakewood Municipal Court | Lakewood, CO | 130,000 | 2 |
| Superior Court/G.A. #14 | Hartford, CT | 145,300 | 3 |
| Superior Court/G.A. #2 | Bridgeport, CT | 262,500 | 4(?) |

| Court | Location | Jurisdiction Population | No. of Judges Handling Criminal Cases |
|---|-------------------|-------------------------|---------------------------------------|
| Sarasota County Court | Sarasota, FL | 200,000 | 2 |
| Monroe County Court | Key West, FL | 55,000 | 3 |
| Polk County Court | Bartow, FL | 321,000 | 6 |
| Dade County Court | Miami, FL | 1,700,000 | 32 |
| State Court of Fulton County | Atlanta, GA | 800,500 | 3 |
| State Court of Cobb County | Marietta, GA | 32,400 | 4 |
| Municipal Court of Savannah | Savannah, GA | 250,000 | 1 |
| District Court, Division of Southern Kennebec | Augusta, ME | 70,000 | 2 |
| District Court, Division of Northern Kennebec | Waltham, ME | 50,000 | 1 |
| District Court, Division of Southern Cumberland | Portland, ME | 141,000 | 1 |
| District Court, Division of Northern Cumberland | Bangor, ME | 70,000 | 3 |
| Itasca County Court | Grand Rapids, MN | 100,000 | 3 |
| Hennepin County Municipal Court | Minneapolis, MN | 960,000 | 12 |
| Ramsey County Municipal Court | St. Paul, MN | 485,000 | 8 |
| Trenton Municipal Court | Trenton, NJ | 94,000 | 2 |
| Atlantic City Municipal Court | Atlantic City, NJ | 59,500 | 1 |
| Princeton Borough Municipal Court | Princeton, NJ | 15,000 | 1 |
| East Orange Municipal Court | East Orange, NJ | 80,000 | 3 |
| Santa Fe District Magistrate Court | Santa Fe, NM | 80,000 | 3 |
| Magistrate Court, Sandoval I Division | Bernalillo, NM | 33,582 | 1 |
| Municipal Court of Santa Fe | Santa Fe, NM | 600,000 | 1 |
| Bernalillo County Metropolitan Court | Albuquerque, NM | 400,000 | 8 |
| Albany Police Court | Albany, NY | 113,000 | 1 |
| City Court of Syracuse | Syracuse, NY | 188,000 | 6 |

| Court | Location | Jurisdiction Population | No. of Judges Handling Criminal Cases |
|---|-------------------|----------------------------|---|
| City Court of Buffalo | Buffalo, NY | 379,000 | 12 |
| Rochester City Court | Rochester, NY | 241,539 | 5 |
| Franklin County Municipal Court | Columbus, OH | 1,500,000 | 3 |
| Cleveland Municipal Court | Cleveland, OH | 600,000 | 13 |
| Akron Municipal Court | Akron, OH | 300,000 | 4 |
| Toledo Municipal Court | Toledo, OH | 353,400 | 7 |
| Payne County District Court | Stillwater, OK | 62,435 | 3 |
| Oklahoma City Municipal Court | Oklahoma City, OK | 500,000 | 2 |
| Shawnee Municipal Court | Shawnee, OK | 30,000 | 1 |
| Davidson County General Sessions Court | Nashville, TN | 485,000 | 7 |
| Shelby County General Sessions Court | Memphis, TN | 777,000 | 2 |
| Municipal Court of Memphis | Memphis, TN | 620,000 | 8 |
| Chattanooga City Court | Chattanooga, TN | 170,000 | 2 |
| Richmond General District Court | Richmond, VA | 220,000 | 2 |
| Fairfax County General District Court | Fairfax, VA | 600,000 | 5 |
| Norfolk General District Court | Norfolk, VA | 275,000 | 2 |
| City of Roanoke General District Court | Roanoke, VA | 105,000 | 3 |
| Spokane County District Court | Spokane, WA | 350,000 | 6 |
| Yakima County District Court | Yakima, WA | 165,000 | 4 |
| Olympia Municipal Court | Olympia, WA | 27,565 | 1 |
| Municipal Court, Spokane | Spokane, WA | 180,000 | 1 |
| Milwaukee Municipal Court | Milwaukee, WI | 700,000 | 2 |
| Kenosha Municipal Court | Kenosha, WI | 85,000 | 1 |
| Laramie County District Court | Cheyenne, WY | 70,000 | 2 |

| Court | Location | Jurisdiction Population | No. of Judges- Handling Criminal Cases |
|-----------------------------|--------------|----------------------------|--|
| Natrona County Court | Casper, WY | 70,000 | 2 |
| Municipal Court of Cheyenne | Cheyenne, WY | 75,000 | 2 |
| Municipal Court of Laramie | Laramie, WY | 25,000 | 3 |

FINES QUESTIONNAIRE TO COURT ADMINISTRATORS

Interviewer _____

Date(s) of Interview _____

Time Interview Begins _____ Time Interview Ends _____

Respondent's Name _____

Title _____

Telephone Number _____

Cols. 1-3
Identification No.

1

Col. 4
Card No.

SECTION I - GENERAL INFORMATION

1. What is the full name of the court?

2. a) What is the address and telephone number of the main courthouse?

Street _____

City _____ State _____ Zip Code _____

Telephone Number _____

b) Other courthouse locations (include names of cities or towns) _____

3. What counties and principal cities or towns are within the court's jurisdiction?

a) Counties _____

b) Cities _____

c) Towns _____

4. Approximately how many persons live within the court's geographical jurisdiction?

Cols. 5-11

5. From what source(s) does the court receive the funds to pay the salaries of the judge(s) and court staff?

a) STATE FUNDS

1) YES (percent) 2) NO

☐
Col. 12

b) COUNTY FUNDS

1) YES (percent) 2) NO

☐
Col. 13

c) MUNICIPAL FUNDS

1) YES (percent) 2) NO

☐
Col. 14

d) OTHER (SPECIFY _____)

1) YES (percent) 2) NO

☐
Col. 15

(INTERVIEWER: VERIFY THAT RESPONSE GIVEN INCLUDES SALARIES OF BOTH JUDGES AND COURT STAFF.)

6. What is the jurisdiction of the court, in terms of the types of cases that it handles?

1) Trial court of general jurisdiction - handles trials of felony cases; does not try cases that only involve misdemeanors

☐
Col. 16

2) Trial court of general jurisdiction - handles both felony and state misdemeanor trials.

3) Trial court of limited jurisdiction, but not a municipal court - handles misdemeanor cases, may handle preliminary proceedings in felony cases.

4) Municipal Court - handles misdemeanor cases (violations of state law) and municipal ordinance violations.

5) Municipal Court - handles municipal ordinance violations only.

6) Other (specify) _____

7. What is the total number of judges on the court?

Cols. 17-19

(INTERVIEWER: IF COURT AT MORE THAN ONE LOCATION, VERIFY THAT RESPONSE GIVEN INCLUDES ALL FACILITIES.)

8. At any one time, how many judges are handling criminal or quasi-criminal cases as all or part of their active caseload?

Cols. 20-22

9. What is the total size of the staff in the court clerk's office? (Do not include bailiffs, court reporters, judges' secretaries, and others not directly involved in the work of the clerk's office.)

Cols. 23-25

(INTERVIEWER: IF COURT AT MORE THAN ONE LOCATION, VERIFY THAT RESPONSE GIVEN INCLUDES ALL FACILITIES.)

10. Following is a broad set of categories of criminal or quasi-criminal cases. Please indicate if the court handles each type of case, and, if so, the approximate number of cases in each category filed in the court during 1980 (or fiscal year 79-80).

a) Felonies

1) YES 2) NO

Number of Cases

☐
Col. 26

Cols. 27-32

b) Misdemeanors (Violations of State Law)

1) YES 2) NO

Number of Cases

☐
Col. 33

Cols. 34-39

c) Motor Vehicle (Traffic Offenses) - Moving Violations

1) YES 2) NO

Number of Cases

☐
Col. 40

Cols. 41-46

d) Parking Violations

1) YES 2) NO

Number of Cases

☐
Col. 47

Cols. 48-53

e) County or municipal ordinance violations other than parking

1) YES 2) NO

☐
Col. 54

Number of Cases

Cols. 55-60

f) TOTAL NUMBER OF CASES

Cols. 61-67

(INTERVIEWER: NOTE IN COMMENT SECTION WHERE RESPONDENT UNABLE TO BREAK DOWN NUMBER OF CASES INTO CATEGORIES, WHERE MISSING INFORMATION, ETC.)

COMMENTS

11. In general, how would you characterize the extent to which fines are used in your court, when a defendant is convicted? (In answering this question, please do not include fines imposed in routine traffic or parking violations.)

- 1) Fines are used in all or virtually all cases.
- 2) Fines are used in most cases.
- 3) Fines are used in about half the cases.
- 4) Fines are seldom used.
- 5) Fines are never used.

☐
Col. 68

12. For what types of offenses are fines commonly used in your court? (List up to 6 offenses.)

- a) _____
- b) _____
- c) _____
- d) _____
- e) _____
- f) _____

SECTION II - COLLECTION OF FINES

13. a) Do you know the total amount of fines imposed by the court in 1980 (or fiscal year 79-80)?

1) YES 2) NO (GO TO (d))

☐
Col. 69

b) What is the amount?

Col. 70-76

(INTERVIEWER: VERIFY THAT AMOUNT GIVEN DOES NOT INCLUDE COURT COSTS, FORFEITURES, ETC.)

Cols. 1-3
Identification No.

☐
Col. 4
Card No.

*(INTERVIEWER: ASK ONLY OF THOSE COURTS HANDLING TRAFFIC CASES)

c) Of the total amount, do you know the amount of fines imposed in:

1) Non-traffic cases?

1) YES 2) NO (GO TO (3))

☐
Col. 5

2) What is the amount?

Cols. 6-12

3) Traffic cases?

1) YES 2) NO (GO TO (d))

☐
Col. 13

4) What is the amount?

Cols. 14-20

(GO TO Q. 14)

d) Could you please give me the name, title, and telephone number of the person who could provide me with this information?

1) YES _____

☐
Col. 21

2) NO

14. a) Do you know the total amount of fines collected by the court in 1980 (or fiscal year 79-80)?

1) YES 2) NO (GO TO (d))

☐
Col. 22

b) What is the amount?

(INTERVIEWER: VERIFY THAT AMOUNT GIVEN DOES NOT INCLUDE COURT COSTS, FORFEITURES, ETC.)

Cols. 23-29

(INTERVIEWER: ASK ONLY OF THOSE COURTS HANDLING TRAFFIC CASES.)

c) Of the total amount, do you know the amount of fines collected in:

1) Non-traffic cases?

1) YES 2) NO (GO TO (3))

2) What is the amount?

3) Traffic cases?

1) YES 2) NO (GO TO (4))

4) What is the amount?

(GO TO p. 15)

d) Could you please give me the name, title and telephone number of the person who could provide me with this information?

1) YES

2) NO

15. a) Approximately how many persons, on a full time equivalency basis, are involved in the collection of fines in your court?

b) To what extent do you agree that your court is sufficiently staffed to carry out the process of fine collection?

1) Agree strongly 2) Agree 3) Not sure
4) Disagree 5) Disagree strongly

16. What happens to the revenues from all fines collected by your court? In answering, please indicate by approximate percentage distribution.

a) STATE TREASURY - GENERAL FUND

b) COUNTY GENERAL FUND

c) MUNICIPAL GENERAL FUND

d) OTHER (SPECIFY)

(INTERVIEWER: TOTAL SHOULD EQUAL 100%)

- 6 -

TOTAL = 100%

17. Approximately what percentage of defendants pay their entire fine on the same day it is imposed in court?

18. Of those defendants who do not pay their entire fine on the day it is imposed, approximately what percentage do pay the entire amount during the time periods granted by the court?

19. If the judge orders the defendant to pay the fine on the same day it is imposed,

a) To whom is the fine paid?

b) Where is the (SEE ABOVE) in relation to the courtroom?

c) Is the defendant escorted to (SEE ABOVE), and, if so, by whom?

20. Which of the following types of payments does the court accept?

a) Cash

1) YES 2) NO

b) Personal Check

1) YES 2) NO

(CONTINUED ON NEXT PAGE)

c) Certified or Cashier's Check

1) YES 2) NO

☐ Col. 71

d) Traveler's Check

1) YES 2) NO

☐ Col. 72

e) Money Order

1) YES 2) NO

☐ Col. 73

f) Credit Card

1) YES 2) NO

☐ Col. 74

g) Apply Cash Bail

1) YES 2) NO

☐ Col. 75

h) Other (specify) _____

☐ Col. 76

21. With respect to the types of payment listed in Question 20 which the court does not accept, what are the reasons for refusing to accept payment in this form?

| Type of Payment | Reason(s) for Refusal |
|-----------------|-----------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

☐ 3
 Cols. 1-3 Col. 4
 Identification No. Card No.

22. Assume that the judge has imposed a fine on a defendant, but is not requiring that the fine be paid immediately:

a) What is the usual amount of time allowed for payment of the full amount (in days)?

☐
 Cols. 5-7

b) What is the maximum amount of time ever allowed for payment of the full amount (in days)?

☐
 Cols. 8-11

c) Who makes the initial decision on the amount of time that is allowed for full payment?

1) JUDGE
 2) CLERK'S OFFICE EMPLOYEE (SPECIFY TITLE) _____

☐ Col. 12

3) PROBATION OFFICE
 4) OTHER (SPECIFY) _____

d) If full payment is not made within the initially allowed time, who, other than a judge, has the authority to extend the time period further?

1) JUDGE ONLY HAS THE AUTHORITY
 2) CLERK'S OFFICE EMPLOYEE (SPECIFY TITLE) _____

☐ Col. 13

3) PROBATION OFFICE
 4) OTHER (SPECIFY) _____

(INTERVIEWER: IF RESPONSE IS OTHER THAN "1", VERIFY THAT APPROVAL OF JUDGE IS NOT NECESSARY)

e) Is interest, or a special collection fee or surcharge, charged on fine amounts not paid immediately?

1) YES (DESCRIBE) _____
 2) NO _____

☐ Col. 14

f) Is an installment payment schedule commonly used when a defendant is not required to pay immediately?

1) YES (DESCRIBE) _____

 2) NO _____

☐ Col. 15

- g) In your opinion, are there any problems associated with installment payment plans?
- 1) YES (SPECIFY) _____ ☐ Col. 16
- 2) NO _____ ☐ Col. 17
- h) What hours is the collection office at the court open to receive payments?
- 1) Monday-Friday hours _____
- 2) Saturday hours _____
- 3) Other hours _____
- i) Can fine payments be made by mail? ☐ Col. 18
- 1) YES 2) NO
- j) Are there other places other than the court (e.g., banks, police stations) where time payments can be made? ☐ Col. 19
- 1) YES (DESCRIBE) _____
- 2) NO _____
23. There are several possible actions that can be taken when a defendant fails to pay a fine within the allotted time. Assuming that the defendant is a resident of the state, which of the following actions are likely to be taken in your jurisdiction?
- a) Letter or notice mailed to defendant ☐ Col. 20
- 1) YES (sent by) _____
- 2) NO _____
- b) Phone call to defendant ☐ Col. 21
- 1) YES (call made by) _____
- 2) NO _____
- c) Warrant issued ☐ Col. 22
- 1) YES 2) NO
- d) Other (specify) _____ ☐ Col. 23
- _____
- e) NO ACTION TAKEN ☐ Col. 24
- 1) YES (GO TO Q. 25) 2) NO

24. When a defendant fails to pay a fine within the allotted time, who decides on what action is taken and when it is to be taken?

- 1) JUDGE
- 2) COURT ADMINISTRATOR
- 3) CLERK OF COURT
- 4) OTHER COURT STAFF MEMBER (SPECIFY) _____

- 5) OTHER (SPECIFY) _____ ☐ Col. 25

- 6) COMEDINATION (SPECIFY) _____

25. Assume that a defendant has been brought before the court for non-payment of a fine (e.g., arrested on a warrant for non-payment or arrested on a different charge and examination of defendant's prior record shows non-payment of a fine for a previous conviction). What action(s) is the court likely to take in these circumstances?

26. If the defendant is not a resident of the state, do the court's policies and procedures differ significantly with respect to imposition and collection of fines?

- 1) YES (SPECIFY) _____

- 2) NO _____ ☐ Col. 26

27. To what extent do you agree that your court has difficulty in collecting fines?

- 1) Agree strongly
- 2) Agree
- 3) Not sure
- 4) Disagree
- 5) Disagree strongly (GO TO Q. 29)

☐
Col. 27

28. There are a number of reasons for a court's inability to collect fines. To the best of your knowledge, could you please indicate to what extent the following might be reasons for your court's inability to collect a fine in some cases? In answering this question, please use a scale that rates each possible reason for non-collection as follows:

- 1) Frequently a reason for non-collection
- 2) Sometimes a reason for non-collection
- 3) Rarely a reason for non-collection

a) Defendant is indigent or too poor to pay the fine

☐
Col. 28

b) Defendant leaves the vicinity and cannot be easily traced

☐
Col. 29

c) The court's recordkeeping system for fines is not adequate

☐
Col. 30

d) Arrest warrants following default are not issued promptly

☐
Col. 31

e) The law enforcement agency responsible for the execution of warrants gives low priority to serving warrants for non-payment of fines

☐
Col. 32

f) Defendant knows nothing serious will happen to him if he fails to pay a fine

☐
Col. 33

g) Other (specify) _____

☐
Col. 34

29. a) Is the recordkeeping system that your court uses to keep track of fines:

- 1) Manual
- 2) Computerized
- 3) A mixed manual/automated system

☐
Col. 35

b) How effective would you say your recordkeeping system is in keeping track of fine payments?

- 1) Very effective
- 2) Effective
- 3) Not sure
- 4) Could be improved
- 5) In great need of improvement

☐
Col. 36

30. a) Is your court's handling of fine revenues audited?

- 1) YES (by whom) _____

☐
Col. 37

- 2) NO (GO TO Q. 31)

b) How often is an audit conducted?

- 1) APPROXIMATELY ONCE A YEAR
- 2) APPROXIMATELY EVERY TWO YEARS
- 3) APPROXIMATELY EVERY THREE YEARS
- 4) LESS THAN ONCE EVERY THREE YEARS

☐
Col. 38

SECTION IV - ATTITUDES TOWARD USE OF FINES

31. a) What do you believe are the principal advantages to using fines as a criminal sanction?

- b) What do you believe are the principal disadvantages to using fines as a criminal sanction?

- c) Are there any particular problems or issues that you feel should be addressed in a national study on the use of fines?

32. Additional comments or suggestions.

APPENDIX C

THE EUROPEAN EXPERIENCE: FINES AS THE SENTENCE OF CHOICE

Those who advocate a reexamination of the American policy preferences for sanctions other than fines and a consideration of the latter's broader application in American courts often draw attention to recent reports from Western Europe suggesting that the fine is the sentence of choice in several important democratic countries (e.g., Gillespie, 1980 & 1981; Carter and Cole, 1979; Felstiner, 1979). Fine use in England, the Federal Republic of Germany and Sweden has been increasing, particularly for more serious offenses. Furthermore, these countries have been experimenting with innovative ways of determining fine amounts in relation to an individual defendant's means.

This Western European preference for the fine as a criminal sanction is in interesting contrast to the ambivalence about fine use in the United States. Yet, on both sides of the Atlantic, similar concerns are expressed about how to reconcile the principles of consistency and equity in the imposition of fines and in their collection and enforcement. Despite these important concerns, there has been very little empirical research that attempts to assess the extent of the problems raised by the use of fine penalties or to evaluate the strategies that have been developed to overcome them. Nonetheless, the European countries of most interest to an American audience, England and West Germany, have addressed these issues to some extent and a body of empirical research exists, although it is limited.

To help remedy this situation, Silvia S.G. Casale, a social scientist in the Vera Institute of Justice's London Office, has prepared

a comprehensive review of the European fine literature as part of our current study. With additional support from the German Marshall Fund of the United States, Dr. Casale also undertook a preliminary examination of fine collection and enforcement efforts in two English magistrates' (or lower) courts. This is an area of particular policy interest to both English and American audiences and one in which empirical material has been virtually non-existent.

In this appendix, we attempt to provide a look at some of the European practices that have particular relevance to policy development in the United States.¹ After a brief discussion of the extent to which the fine is the sentence of choice in England, Sweden, and West Germany, we shall turn to a more detailed examination of the "day-fine" system. Initially an innovative attempt by the Swedish to fit fine penalties to the means of the offender as well as to the nature of the crime, the day-fine has come into standard use in Sweden and has also been modified for application to the West German criminal justice system.² Because British policymakers are currently focusing on ways to reconcile the principles of equity and consistency in their own use of fines, England has been debating the introduction of the day-fine into its sentencing practices. For the same reasons, the day-fine has attracted the attention of American policymakers, and some recent proposed revisions of

¹ For a full report of the study upon which this appendix is based, see Casale (1981).

² The day-fine, discussed more fully below, refers to a two-stage process of setting a fine in which the number of units to be fined is determined first on the basis of offense gravity; the monetary value of each unit is then set on the basis of a specific offender's financial means.

federal sentencing statutes have included it. Despite the widespread interest in this mechanism, the only empirical research on the operation of a day-fine system (Albrecht, 1980) has not been translated into English; consequently, we shall make a particular effort to incorporate some of its major findings here.³

The Pre-eminence of the Fine
as a Criminal Sanction

During this century, the use of the fine has increased dramatically in England, Sweden and Germany vis- -vis other sentencing options, particularly short-term imprisonment. Whereas in Sweden (as in all the Scandinavian countries), the fine has had an uninterrupted history as the numerically most important penalty, in West Germany and England the fine's pre-eminence is of more recent origin. Although comparisons across national boundaries are difficult to make because official statistics are constructed somewhat differently,⁴ it appears that West Germany shows the most extensive use of fines for adult offenders sentenced for non-traffic offenses. Approximately 75 percent of such offenders are sentenced to fines. In England, the equivalent proportion is about 73 percent, and in Sweden it is about 69 percent. (See Tables C-1, C-2 and C-3.) Again, although cross-national comparisons are imprecise, it appears that these countries' use of the fine is not restricted to petty crimes. For example, as these tables indicate, for

³ For a much more detailed discussion of Albrecht's work on the German day-fine system, see Casale, 1981: Part II.

⁴ For example, the age groups covered in these statistics are slightly different for each country: 15 and over in Sweden; 17 and over in England and Wales; and 18 and over in Germany.

offenses against the person, about two-thirds of all offenders in West Germany are fined, as compared to about half of all offenders in England and Sweden. Whatever the exact contrasts may be for precisely the same criminal behavior, it is clear that in England, West Germany and Sweden, the fine is heavily used and that it is the sanction of choice for many types of criminal offenses.

It is also the primary alternative to short-term imprisonment as a penalty in all these criminal justice systems. Even in Sweden, where short-term incarceration remains a pillar of its sanctioning system, there is a decided tendency for Swedish courts to see the fine as the appropriate sentence over imprisonment when the law allows either alternative; this is particularly evident with respect to simple assault and simple property offenses (Andenaes, 1974; S.O.U. Bötesverkställighet, 1975; and Casale, 1981: personal communication Dr. K. Cornils). In Germany, the tendency to use a fine rather than a short term prison sentence has been gradually growing over the last hundred years (Stenner, 1970). This tendency became even more dramatic after the 1969 revision in the Penal Code. In 1968, over 110,000 prison sentences of less than six months were awarded (20% of all convictions); this number

Table C-1:

England and Wales: Persons Ages 17 and over
Fined by Major Offense, 1979

| Offense | Fined | | All Persons Sentenced | |
|--|------------------|----------------|-----------------------|---------------|
| Violence against the Person | 21, 768 | (52.0%) | 41,856 | (100%) |
| Sexual Offenses | 2,943 | (43.8%) | 6,723 | (100%) |
| Burglary | 9,750 | (27.0%) | 36,117 | (100%) |
| Robbery | 51 | (2.1%) | 2,469 | (100%) |
| Theft/Handling Stolen Goods | 102,305 | (58.2%) | 175,666 | (100%) |
| Fraud/Forgery | 9,657 | (48.7%) | 19,824 | (100%) |
| Criminal Damage | 3,195 | (48.0%) | 6,659 | (100%) |
| Other Either-Way Offenses | 14,065 | (67.5%) | 20,836 | (100%) |
| Summary Offenses - excluding Traffic offenses | 342,063 | (75.4%) | 453,542 | (100%) |
| Sub Total | 505,797 | (73.4%) | 688,892 | (100%) |
| Traffic Offenses | 1,050,139 | (98.4%) | 1,067,716 | (100%) |
| Grand Total | 1,555,936 | (88.6%) | 1,756,698 | (100%) |

Source: Criminal Statistics England and Wales, 1979 (London: H.M.S.O., 1980).

Table C-2: Federal Republic of Germany: Persons Fined in 1979 by Offense Group

| Offense Group | Fined | | Total Offenders Sentenced | |
|-----------------------------------|---------|---------|---------------------------|--------|
| Offenses Against the Public Order | 10,692 | (77.8%) | 13,736 | (100%) |
| Sexual Offenses | 1,607 | (33.3%) | 4,830 | (100%) |
| Violence Against the Person | 29,815 | (66.1%) | 45,102 | (100%) |
| Theft and Embezzlement | 82,667 | (76.2%) | 108,446 | (100%) |
| Robbery | 138 | (5.3%) | 2,613 | (100%) |
| Other Property | 45,368 | (76.5%) | 59,336 | (100%) |
| Other | 60,074 | (83.8%) | 71,726 | (100%) |
| Sub Total | 230,361 | (75.3%) | 305,789 | (100%) |
| Traffic Offenses | 257,008 | (89.9%) | 285,754 | (100%) |
| Grand Total | 487,369 | (82.4%) | 591,543 | (100%) |

Source: Strafverfolgungsstatistik 1979 (Wiesbaden : Statistisches Bundesamt, 1980).

Table C-3: Sweden: Persons Sentenced by Type of Fine and by Major Offense, 1979

| Offense | Summary Fine | Summary Penalty | Court Fine | All Fines | All Persons Sentenced |
|-----------------------------|--------------------|-------------------|-------------------|--------------------|-----------------------|
| Offenses Against the Person | - | 779 (11.4%) | 2,723 (39.8%) | 3,502 (51.2%) | 6,839 (100.0%) |
| Property Offenses | - | 8,987 (28.3%) | 6,671 (21.0%) | 15,658 (49.3%) | 31,744 (100.0%) |
| Offenses Against the Public | - | 94 (8.0%) | 332 (28.4%) | 426 (36.4%) | 1,168 (100.0%) |
| Offenses Against the State | - | 1,248 (21.9%) | 2,396 (42.1%) | 3,644 (64.0%) | 5,696 (100.0%) |
| Narcotics Offenses | - | 328 (18.6%) | 408 (23.1%) | 736 (41.7%) | 1,763 (100.0%) |
| Contraband Offenses | - | 17,145 (91.7%) | 1,246 (6.7%) | 18,391 (98.4%) | 18,701 (100.0%) |
| Tax Offenses | - | 5 (1.1%) | 189 (41.4%) | 194 (42.5%) | 457 (100.0%) |
| Other | 803 (6.6%) | 7,447 (61.0%) | 3,182 (26.1%) | 11,432 (93.7%) | 12,214 (100.0%) |
| Sub Total | 803 (1.0%) | 36,033 (45.9%) | 17,147 (22.2%) | 53,983 (69.1%) | 78,582 (100.0%) |
| Traffic Offenses | 176,518 (66.9%) | 57,896 (22.0%) | 20,590 (7.8%) | 255,004 (96.7%) | 263,688 (100.0%) |
| GRAND TOTAL | 177,321 (52.1%) | 93,929 (27.6%) | 37,737 (11.1%) | 308,987 (90.8%) | 340,270 (100.0%) |

Source: Rättstatistisk orbok, 1980.

was reduced to just over 10,000 (1.8%) by 1976 (Gillespie, 1980:20-21). Correspondingly, as Gillespie notes, fine sentences rose dramatically: from 63 percent in 1968 to 83 percent in 1976 (p. 21).

While the more recent predominance of the fine in the English system is less clearly attributable to a dramatic shift away from imprisonment across all types of cases, research indicates that in relation to serious offenses a similar pattern of events is discernible in England. An analysis of convictions for offenses of violence against the person over the period 1938 to 1960 in England and Wales shows that the most outstanding sentencing phenomenon was the shift from short-term imprisonment to the fine (McKlintock, 1963). Especially in convictions at the indictable level, the increase in use of the fine for such offenses was far greater than any other penalty (p. 149).⁵

Why is this? Particularly given the pervasive reservations expressed about the use of the fine in the United States, why have these countries embraced it as the sentence of choice?

⁵ Despite some controversy, there is reason to believe this trend will continue. In 1979 the Lord Chancellor of England in his address to the Magistrates' Association expressed the opinion that the fine might appropriately be used more frequently as an alternative to imprisonment. Although his suggestion seemed to be limited to cases of dishonesty and damage to property, rather than embracing offenses of violence against the person, it is nonetheless indicative of the official position in recent years. The October 1980 Home Office circular from the Permanent Under Secretary to the Chief Clerks of the Magistrates' Court expressed a similar view. While there was sharp reaction in the press and the courts, it was centered on the perceived attempt to dictate sentencing practice and not on the desirability of extending the use of fines.

The answer is not entirely clear; however, several suggestions can be offered from a review of the theoretical, philosophical and policy literatures on sentencing in these countries.

It would appear that a central sentencing goal in these systems is punishment; both the fine and imprisonment are seen largely in these terms, although deterrence is also a consideration (Morgan and Bowles, 1981). In all these countries, there is a long tradition of using monetary penalties going back to the Middle Ages and before (Leach, 1981), and probation, with its central rehabilitative aims, has been used in recent times far less frequently and far more selectively than in the United States. Fines (monetary penalties) and short-term imprisonment, therefore, have long been turned to as punishing penalties. In England, the recent trend away from short-term imprisonment and toward even heavier reliance on fines has been explained in terms of several related factors (McKlintock, 1963). Among the most important are, first, the proportional increase in young offenders (especially those convicted of crimes of violence) and the prevailing policy of not imprisoning offenders under 21 years old (see, Advisory Council on the Treatment of Offenders, 1959; Criminal Justice Act of 1961); second, the increase in non-stranger crimes of violence; and third, prison overcrowding and a general disenchantment with the deterrent effects of short-term imprisonment. In short, therefore, it appears that fines have been seen primarily as an alternative to incarceration when offen-

ders are thought to require punishment but when confinement or specific rehabilitation are not thought appropriate.⁶

One important dimension of this perspective on sentencing is a widespread skepticism in these countries about the deterrent effects of incarceration. The notion prevails, therefore, that fining may be penologically effective (Morgan and Bowles, 1982:204) or, at least, that it is less ineffective in terms of subsequent behavior by offenders who are fined than are other penalties (Harris, 1980:10). The somewhat tentative tone of this proposition is, no doubt, a result of the general disinclination to claim any generalizable effect for any sanction. And, indeed, it is extremely difficult to provide credible research data demonstrating any direct connection between sentences and recidivism rates, although English and German researchers have attempted to examine this elusive relationship. They have done so, however, largely by the unsatisfactory means of comparing the reconviction rates of offenders sentenced by different penalties. For example, data from Mainz, Germany, suggest that for the 1953 to 1964 period, reconviction rates for fined offenders were significantly lower than for those sentenced to probation or short-term imprisonment (18% compared to 22% and 56%, respectively; Stenner, 1970). Findings are similar for England but they are equally as unenlightening because one cannot be certain that the groups of offenders sentenced to different penalties are not substantially dissimilar in terms of their backgrounds, including previous con-

⁶ There are some notable exceptions to this; for example, in Sweden short-term incarceration is the standard penalty for drinking driving offenses, and fines are also often added to probation and conditional sentences. (In contrast, fines in combination with other sentences are rare in both England and Germany.)

victions, demographic or socioeconomic status. (See, for example, Davies, 1970; McKlintock, 1963:172; and Softley, 1977:7-9.) Nonetheless, such findings tend to be used as a support for the idea that the fine is no less ineffective as a sentence than is incarceration for fined offenders. Because there is a general disinclination to use custodial sentences (because of their potential harmful effects) until their deterrent value can be firmly established, fines are viewed favorably in many circumstances.

Despite the dissimilarities between these European countries and the United States with regard to the use of fines and attitudes toward their use, the concern is similar on both sides of the Atlantic about the equitable imposition and enforcement of fines. Although each of these countries has a somewhat different social structure and welfare policy, all are characterized by an unequal distribution of wealth and by a population of criminal defendants heavily drawn from the bottom ranks of that distribution. The poverty of many offenders is one of the major factors noted by American practitioners and policymakers who hesitate regarding the expanded use of the fine. It is reasoned by many that if fine amounts are directly related to the seriousness of the offense but, at the same time, kept low enough to ensure that most defendants have a reasonable chance of paying them, then more affluent offenders will be able to "buy" their way out of punishment and the poor will suffer proportionately greater deprivation in meeting their obligations. This dilemma has also led some in England to oppose further expansion of the use of fines as an alternative to imprisonment for more serious offenses (Shaw, 1980). In addition to the ethical problems involved, it is feared that default rates will increase, that the costs

of collection will escalate, and that the poor will be jailed anyway for default. This same dilemma, however, has led others in England to suggest that the courts consider introducing a day-fine system, such as that used in Sweden and in West Germany, to levy fines that are both consistent (in relation to offense severity) and equitable (in relation to offenders' means). This mechanism for fining offenders was specifically designed to balance the principles of fitting the penalty to the crime while exacting equal sacrifice from different individuals, that is, fitting the penalty to the offender's means.⁷

Day-fine Systems: Reconciling the
Principles of Consistency and Equity in Setting Fine Amounts

The day-fine system is a Swedish innovation that attempts to reconcile the two potentially conflicting principles of consistency and equity in sentencing by creating a two-stage decision setting the amount of the fine. The theoretical separation of the stages is identical in

⁷ Although the English have not yet adopted a day-fine system, English fining practices already recognize these dual threads in the decision-making process. Moreover, it has also been argued that the decision whether to use a fine should be separate from the decision as to the fine amount (Latham, 1980). The English High Court requires a court "to consider first what type of sentence is appropriate. If it decides that the appropriate type of sentence is a fine, it is then necessary to consider what would be the appropriate amount of fine having regard to the gravity (or otherwise) of the offense. Finally...-the court should consider whether or not to modify this amount having regard to the offender's means" (p. 85-6). However, there is considerable disagreement among English practitioners as to the proper relationship between the amount of the fine and the offender's means. At one extreme are those who call for a uniformity in the decision with a clear implication that a tariff system based upon offense is appropriate (Justice of the Peace, 1967:36). At the other extreme are those advocating something closer to a day-fine system in which the fine is increased or decreased based upon the offender's means (Scottish Council on Crime, 1974; Advisory Council on the Penal System, 1970). In the latter case, however, the mechanical problem of how to determine the offender's means for the purpose of fining has not as yet been resolved.

the Swedish system and the German system which was modeled after it: the number of day-fine units to which an offender will be sentenced is to be determined first with regard to the seriousness of the crime but without regard to the means of the offender; subsequently, the monetary value of each day-fine unit is to be determined by what the offender can afford to pay (his or her means and financial responsibilities), so that the penalty causes an appropriate level of economy short of actual hardship. The degree of punishment, therefore, should be in proportion to the gravity of the offense, and equivalent across defendants of differing means.

Despite this theoretical reconciliation, it is not clear that either the Swedish or the German system operates to ensure it always occurs in practice. Official statistics show that the number of day-fine units imposed are indeed reflective of the perceived seriousness of the offenses. (See Tables C-4 and C-5.) However, less is known about the monetary value of the day-fine units imposed on offenders of varying means, because official statistics do not provide fine amounts according

Table C-4: Sweden: Persons Fined by a Summary Fine,¹ a Summary Penalty² or a Court Sentence, by Principal Offense and the Nature and Size of the Fines, 1979

| Principal Offense | Persons Sentenced to Day-Fines or Disciplinary Fines, Number of Day-Fines or Days | | | | | |
|---|---|-------|-------|-------|---------|-------|
| | 1-9 | 10-29 | 30-49 | 50-99 | 100-180 | TOTAL |
| Offenses Against Life and Health ³ | 3 | 580 | 654 | 664 | 65 | 1,966 |
| Offenses Against Liberty and Peace ⁴ | 6 | 738 | 319 | 266 | 48 | 1,377 |
| Sexual Offenses | - | 50 | 49 | 26 | 3 | 128 |
| Other Larceny Offenses | 13 | 3,882 | 320 | 133 | 5 | 4,353 |
| Theft Offenses | 4 | 3,272 | 1,840 | 700 | 17 | 5,833 |
| Robbery | - | - | 1 | 1 | - | 2 |
| Deception/Dishonesty | 7 | 909 | 431 | 182 | 20 | 1,549 |
| Embezzlement | 2 | 158 | 94 | 71 | 3 | 328 |
| Damage | 9 | 1,762 | 1,391 | 400 | 22 | 3,584 |
| Forgery | - | 33 | 72 | 28 | - | 133 |
| Perjury/False Statements | - | 49 | 48 | 46 | 6 | 149 |
| Offenses in Respect of Public Office ⁵ | - | 529 | 513 | 462 | 66 | 1,570 |
| Narcotics Offenses | - | 301 | 257 | 154 | 22 | 734 |

Footnotes

- ¹ A summary fine is a fine in writing imposed by a policeman. It is only imposed for minor offenses, for instance, disorderly conduct and can at most amount to Sw Cr 300 for a single crime and Sw Cr 700 for a common penalty for several offenses.
- ² A summary penalty is imposed by the prosecutor for offenses for which no penalty more severe than a fine is prescribed or, in certain instances, for offenses in which the scale of penalties includes imprisonment for six months at most. In the case of a summary penalty the most severe punishment that can be imposed is the total of 50 day-fines for one offense and 60 day-fines as a common penalty for several offenses.
- ³ Including murder, manslaughter, assaults.
- ⁴ Including kidnapping, threat, intrusion, wire-tapping.
- ⁵ E.g. threat to public official, bribery.

N.b. All persons are included, that is, the fine might have been the one and only penalty or the fine is combined with another penalty, for example probation.

Source: Rättstatistisk orsbok, 1980.

Table C-5: Federal Republic of Germany: Persons Fined by Number of Day Fines by Offense Group in 1979

| Offense Group | 5-15 Day Fines | 16-30 Day Fines | 31-90 Day Fines | 91-180 Day Fines | 181-360 Day Fines | 361+ Day Fines | TOTAL |
|-----------------------------------|----------------------|-----------------------|-----------------------|------------------------|-------------------------|----------------------|-------------------|
| Offenses Against the Public Order | 3,292 (30.8%) | 4,100 (38.3%) | 2,860 (26.7%) | 428 (4.0%) | 11 (1.0%) | 1 (0%) | 10,692 (100%) |
| Sexual Offenses | 220 (13.7%) | 638 (39.7%) | 659 (41.0%) | 86 (5.4%) | 3 (0.2%) | 1 (0.1%) | 1,607 (100%) |
| Violence Against the Person | 10,034 (33.7%) | 11,357 (38.1%) | 7,846 (26.3%) | 569 (1.9%) | 9 (0%) | - | 29,815 (100%) |
| Robbery | 12 (8.7%) | 35 (25.4%) | 76 (55.1%) | 14 (10.1%) | 1 (0.7%) | - | 138 (100%) |
| Theft and Embezzlement | 47,627 (57.6%) | 22,289 (27.0%) | 11,340 (13.7%) | 1,367 (1.7%) | 38 (0%) | 6 (0%) | 82,667 (100%) |
| Other Property | 15,839 (34.9%) | 16,950 (37.4%) | 11,308 (24.9%) | 1,198 (2.6%) | 70 (0.2%) | 3 (0%) | 45,368 (100%) |
| Other | 1,206 (21.7%) | 2,365 (42.6%) | 1,873 (33.7%) | 104 (1.9%) | 2 (0%) | - | 5,550 (100%) |
| Sub Total | 78,230 (44.5%) | 57,734 (32.8%) | 35,962 (20.5%) | 3,766 (2.1%) | 134 (0.1%) | 11 (0%) | 175,837 (100%) |
| Traffic Offenses | 60,720 (23.6%) | 105,829 (41.2%) | 88,885 (34.6%) | 1,538 (0.6%) | 33 (0%) | 3 (0%) | 257,008 (100%) |
| Grand Total | 138,950 (32.1%) | 163,563 (37.8%) | 124,847 (28.8%) | 5,304 (1.2%) | 167 (0%) | 14 (0%) | 432,845 (100%) |

Source: Strafverfolgungsstatistik 1979 (Wiesbaden : Statistisches Bundesamt, 1980).

to offense or income categories.⁸ Nevertheless, the Swedish system appears to work smoothly in practice and its adaptation to the German courts in 1975 seems successful. Most German practitioners accept the system, the use of fines has continued to be high, and fine amounts have actually increased.

Because the day-fine system has attracted wide attention in Britain and the United States, we shall describe its operations in some detail. Interestingly, the most extensive piece of empirical research on fining in the European literature is not on the original Swedish day-fine system which has generated most of the attention, but on the German day-fine system which was only recently adopted (Albrecht, 1980). This is fortunate, however, because the legal and social context of the Federal Republic of Germany is more analogous to the English and American systems than is the more idiosyncratic Swedish context.

The Swedish Day-Fine Model

The Swedish model for imposing day-fines is daunting because of its technical complexity. The State Prosecutor General issued a circular in 1973 setting forth precise procedural instructions. The calculation of available funds is based on the individual's gross annual income from which are subtracted business expenses, maintenance or living expenses; there is a twenty percent reduction for persons married or

⁸ Research on the German system, however, suggests that for the 50 percent of the sample for which income data were officially available, there was a significant correlation between median income and the value of the day-fine unit imposed (Albrecht, 1980:207-9). However, the relevance of additional economic factors (e.g., dependents) was not as clearly demonstrated (p. 214).

living together on a regular basis, but if the other person is employed, twenty percent of the second income is added to the sum. Half the basic child maintenance rate is subtracted for each dependent child. The day-fine is then calculated as 0.1 percent of the resulting figure. From this day-fine unit, a graduated reduction is made depending on tax contributions; to the basic unit there are a scale of additions reflecting high income levels.

This complex formula is only useful because generally rather detailed and complete information concerning a defendant's income is readily available in the courts, particularly as compared with the data available to German, English, and American court systems. The information is usually collected from the defendant by the Swedish police on a "levnadsberättelse," a personal data form. The section dealing with means covers: (a) salary and other related benefits, including pension, annuity, free accommodation or food, etc; (b) other income from real estate, capital, additional work, spouse/living partner's work; (c) children and the degree of their dependence; and (d) income tax return.

The offender attaches his income tax return or his tax receipt to the police form. The police may verify the information by application to the tax authorities but in practice they rarely check in this way, relying instead on the offender's statement, which may be more reliable in Sweden than would be the case in a less homogeneous society. Some practitioners feel that the mere existence of the verification possibility is sufficient to guarantee reliability.

Because the information on offender's means is so detailed and accessible in the Swedish system, the Swedish model is not particularly useful for potential transfer. The West German court system, however,

is more analogous to the English and American systems with respect to the degree of information available about offenders' means, as well as the heterogeneity of the society.

The West German Day-Fine Model

The German Tagebussensystem (day-fine system) is also based upon a two-fold assessment: the number of Tagessätze (day units) is determined by the gravity of the offense and the extent of the offender's culpability; the monetary value of each Tagessatz is determined by consideration of the offender's means. (See, Zweites Gesetz zur Reform des Strafrechts 1969, Section 40.1). An individual on welfare might thus be fined five day units of two deutsche marks (D.M.) each for a minor offense (i.e., a ten D.M. fine, or about \$4 in 1982 dollars).

The two D.M. value of the Tagessatz is the minimum permitted (under \$1.00); the minimum number of Tagessätze is five. Therefore, the above example represents the least possible fine in the German day-fine system. The notion of minima and maxima, of course, is inimical to the pure concept of the day-fine (Grebing, 1976:91). Yet the German system has maxima as well as minima. The highest number of Tagessätze imposable for a single offense is 360; the maximum value of a Tagessatz is 10,000 D.M. (about \$4,000). Therefore, under the Tagesbussensystem, a fine may vary from 10 D.M. (about \$4) to 3.6 million D.M. (\$1.5 million), or 7.2 million D.M. (\$2.9 million) for consecutive sentences. The introduction of the day-fine system in Germany has had the effect of raising the actual level of fines imposed, especially in traffic cases against offenders with substantial means (Albrecht, 1980:221).

Although there is no direct correspondence between the number of Tagessätze and terms of imprisonment imposed for similar offenses, the 360 maximum is logically linked to the idea of a one year prison term. The assessment of gravity of the offense is not strictly or solely determined by a comparison of prison sentence alternatives, but prison maxima for certain offenses as well as the general tariff system for prison sentences operating in practice with respect to various offenses, do seem to play a part in defining the relative seriousness of offenses (Horn, 1974).

The calculation of number of day-units corresponding to the offense is not narrowly prescribed by the law. Courts have, therefore, evolved guidelines relating to this decision which may vary from region to region.⁹ In the area studied by Albrecht (1980), the regional authorities had produced guidelines for ranges of day-fine units corresponding to broad offense groups. However, the range is so great for particular offense categories (e.g., 10 to 50 units for theft) as to render the guideline system virtually meaningless. Given this latitude, it is possible for a judge to tinker with the figures in such a way as to assign a number of day-units within the range based not only on the degree of gravity or culpability involved, but also on a calculation of what the resulting total fine would be, given the value in D.M. of each day unit for the defendant. This puts the cart before the horse and

⁹ Data on England and Sweden, as well as Germany, suggest that there is considerable variation in courts' sentencing practices, even within offense categories, across regions of the country with respect to imposing fines and custodial sentences. Such regional variations seem greater than the variations among judges within a given region, and are probably at least partially the result of differing "judicial cultures." (See Hood, 1962; Tarling, 1979; Schiel, 1969; and Church, 1978.)

reduces the day-fine system in practice to a post facto rationalization of a decision based on more traditional sentencing notions.

For this reason, there has been some discussion in Germany of reforms to the system aimed at separating the two stages of the decision so that the official assessing the appropriate number of day units would be a different individual from the person responsible for the calculation of day unit values based on means. The first decision might require judicial expertise, but the second is clearly a matter of socio-economic assessment. Employment of different personnel would ensure the important separation of these functions and might even reduce time spent in court. The second stage in the assessment could equally well occur in the fines office, where competent staff could make the necessary inquiries into means.

The problem of assessing offenders' means has received some attention from critics of the German system because, as English policy-makers are quick to note, the efficacy of a day-fine system hinges upon the ability of courts to assess income. Clearly, absolute accuracy is not possible, and is not demanded by the German law, which recognizes that in some circumstances only an approximate measurement may be feasible.

The law allows this flexibility in particular if the evidence is not at hand or not available or if unreasonable delay would result from investigations to obtain the evidence. In practice, the solution to the means inquiry is usually an estimate based on easily available information, normally from the offender and from the police report, which may contain details of employment. As a practical matter, the lower the expected number of Tagessätze (i.e., the less grave the offense or the

offender's culpability), the less stringent are the requirements for ascertaining means.

Further sources of information were discussed during a recent German legislative debate on the Tagebussensystem. However, it was decided that the confidentiality of tax returns should not be revoked in order to facilitate the operation of the Tagebussensystem. In West Germany, banks are already under an obligation to assist the courts or the prosecutorial authorities by providing information concerning persons named, but this source of information is apparently rarely used in practice in the day-fine system.

Additional problems concerning the estimation of means arise in the case of non-earning housewives, students and the unemployed. If the housewife is divorced or separated, support payments may be used as a basis for assessing means; student grants and scholarships are likewise taken into consideration. However, the problem of the offender receiving unemployment or welfare benefits remains, and the Germans (as the English) have not found a satisfactory solution to it. Albrecht and practitioners interviewed by Casale in Germany report that the courts normally apply the minimum of two D.M. as the amount of the Tagessatz on the assumption that even the poorest offender will be able to pay such a nominal fine. However, such "symbolic fines" are controversial, with skeptics viewing them as inadequate to punish or to deter crime.

A further difficulty in assessing means stems from fluctuations in income. The law provides for averaging income over time in cases in which earnings are not static. However, a problem which has not been fully solved is that of the offender who becomes unemployed after the time of the means assessment. Under present German law, there is no

possibility of reducing the original amount of the Tagessatz, although the offender may be able to negotiate a moderation of the terms of payment. This might mean that he/she had a longer period in which to pay the fine or installment. The fact that the amount cannot be reduced, however, has serious implications for the unequal sacrifice felt by offenders who lose their jobs.

The Day-fine in America: Future Possibilities

One of the recent bills submitted to Congress for revising the federal criminal code has called for a type of day-fine system, whereby the court could sentence an offender to pay a daily fine for a term of not less than ten days or more than 1,095 days (three years): "The amount of the daily fine imposed on an offender shall be fixed by the court on the basis of such offender's employment income, earning capacity, or financial resources. The amount of such daily fine shall not exceed (1) \$1,000 per day for a Class A or Class B felony; (2) \$500 per day for a Class C or a Class D felony; (3) \$100 per day for a Class E felony; or (4) \$50 per day for a misdemeanor or a violation" (§1, 93rd Congress, 1973). This bill has never passed Congress. To our knowledge, among American jurisdictions, only the statutes of Kansas provide for a type of day-fine, although that law also provides for community service in lieu of cash payment. The statute specifies that, as a condition of probation or suspended sentence, a Kansas defendant may be ordered to "perform services under a system of day fines whereby the defendant is required to satisfy monetary fines or costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of

living, support obligations and other factors" (Kansas Statutes Annotated, §21-4610).

Some might argue that establishing a system of day-fines to be tailored to offenders' means would be inconsistent with the American trend toward uniformity in sentencing. However, wide discretion in setting fines already exists, and a system of day-fines could serve to rationalize this discretion somewhat better. It seems likely that similarly situated offenders (in terms of case characteristics and financial resources) would be fined in similar amounts more often under a system of day-fines than under the present nonsystem. Perhaps those who fear disparity envision a less systematic approach to day-fines than we have been discussing. And these fears may be partially realistic because the implementation of a concept is often far more casual than the theory would suggest. If American courts were to adopt day-fines on a large scale, the German experience with judges presumably adjusting day-fines to suit their inclination might be widespread if mechanisms such as those being considered in Germany are not made part of the system (e.g., setting narrower guidelines for the number of day-fine units by type of charge and circumstance, and separating the two stages of decision-making).

Problems in obtaining information about defendant's means might also be handled as they have been in Germany. Germany has "solved" this problem by sacrificing the verification of means information. The German day-fine system depends heavily on self-report of income. If the courts know what type of job the offender has (e.g., for the purposes of estimating bail or recognizance or through Probation pre-sentence reports), this may become the sole basis for a rough assessment of income level; however, estimation is said to be easiest for those

working at the lowest level jobs or who are on public assistance. Given the prevalence of poor defendants in United States courts, and the German experience of few problems from assuming poverty, perhaps we could also sacrifice income verification without a high level of abuse to the system. Nevertheless, the possibility of obtaining verified income information would be worth exploring, particularly for those convicted of more serious offenses and for those offenders who are more affluent.

Fine Collection and Enforcement¹⁰

Virtually no routine statistical data are available in the United States about collection rates or the use of and success of various

¹⁰ The terms collection and enforcement, as applied to fines, are often used interchangeably. Certain methods used by magistrates' courts to promote the payment of fines are clearly persuasive (e.g., reminder letters, means summons). Others are more coercive in nature: the use of distress or committal entails forcible seizure of property or person. Because of this important difference we refer to persuasive methods as part of a collection strategy, whereas coercive means of securing payment are viewed as modes of enforcement, although we also recognize actual use of these methods reflects more a continuum of behavior than a dichotomy. It might be argued that the means warrant is coercive rather than persuasive and therefore an enforcement rather than a collection technique. However, the object of the means warrant, or means inquiry warrant as it is sometimes called, is to coerce appearance rather than to coerce payment. Thus it lies in a no man's land between the techniques adopted to persuade offenders to pay and those designed to force them to pay. The means warrant, though it has a coercive element, can appropriately be viewed as part of the larger strategy of bringing offenders to court to inquire into their means. Again, although the court has the ultimate power to coerce payment, the means inquiry in itself is not used to coerce payment in the sense that in practice the default court decides whether or not to issue and suspend a committal warrant. The effect of the means inquiry is almost always to allow the offender a chance to pay voluntarily. We have heard of only exceptional instances of imprisonment at default court; indeed this is only possible if the court had at a previous hearing (either at fine imposition or at an earlier means inquiry) set an alternative of imprisonment in the event of default.

Therefore, although the means inquiry might be viewed a coercive measure, distress, committal and attachment of earnings are clearly more coercive measures. The payment in property, money, or in time served is threatened to be exacted forcibly.

enforcement techniques. The situation in Western Europe is only slightly better (at least for the three countries on which we have focused), but there is at least some research information to be reviewed. The default rates of these court systems are of interest because American policy-makers express concern that expanding fine use to European levels would only increase default and the problems associated with it: rising enforcement costs and jailing poor defendants for nonpayment. The success Western European court systems have had with various enforcement techniques is also of interest, not just because there is so little known about this process in the United States, but because many of the methods applied in Europe are the same as those available under American statutes, particularly coercive methods such the garnishment of wages, the seizure of property (distress), and committal to jail.

English research suggests that successful collection is closely related to the amount of the fine--lower fine amounts being more easily collected--and to the financial resources of the offender--more affluent offenders being more forthcoming with their payments (Softley, 1977; Davies, 1970).¹¹ Given the relative lack of resources of most criminal

¹¹ Nonpayment is also related to an offender's prior convictions (particularly if there are more than three) and the type of offense (notable, drunkenness, indictable property offenses, and nonindictable revenue and property offenses) (Softley, 1973 and 1977; Sparks, 1973).

offenders, it is not surprising then that fine amounts in England tend to be low, well below statutory maxima.¹²

Despite low fine amounts, default is not uncommon in English Magistrates' Courts. Again, while official data are lacking, research suggests that about a quarter of fined offenders are in default (that is, in arrears) after 18 months (Softley, 1977; Casale, 1981).¹³ Collection success appears somewhat better in both Sweden and Germany, although once again official data are not available. In Sweden, it is reported that almost all fined offenders pay eventually as a result of vigorous civil enforcement practices against defaulters (Casale, 1981; personal communication, from Dr. K. Cornils; Utsökningslag, Ch. 4). The Albrecht study mentioned earlier in Baden-Wurttemberg (1980) suggests about an eight percent default rate in this German jurisdiction.

¹² Unfortunately, official statistics on fine use and collection are not readily available in England, and this statement is based upon limited research data. Softley (1977) shows that in 1974, only 5 percent of the fined offenders he sampled had been sentenced to a fine of more than 50 (which is under \$100 in 1982 dollars); 61 percent were fined to less than 90 (under \$180). Casale's preliminary investigation of two Magistrates' Courts (1981) indicates that the median fine amount in the central London court she studied was 10 (x = 28); in the provincial court studied the median was 50 (x = 64).

¹³ Softley's data reflect a 1974 sample of fined offenders in England and Wales. Casale's data are based upon two more recent samples of fined offenders drawn from an urban Magistrates' Court and one in a provincial town. In Casale's urban court sample, 16 percent were jailed for default, 8 percent were written off (whereabouts unknown, incarcerated for another offense, died), 0.4 percent were remitted on appeal, and 3 percent were outstanding after 18 months. In the town sample, after 12 months, 0.4 percent were jailed for default, 14 percent written off, and 9 percent outstanding (1981:Diagrams 1 and 2, pp. 28-29).

Obviously, not all fine collection occurs "voluntarily", that is, without specific enforcement action on the part of the collection agent to ensure that default remains at a minimal level.¹⁴ Sometimes, these actions are merely written or verbal reminders, or a request that the defaulter appear in court for a means hearing. These non-coercive techniques are not, however, ineffective enforcement devices. In the two English Magistrates' Court samples mentioned above (Casale, 1981), 55 percent of the city sample voluntarily paid in full, and an additional 11 percent paid after such non-coercive collection measures were applied (34% of those so "reminded"). In the town sample, 52 percent paid in full voluntarily and an additional 15 percent paid after being reminded (31%). (See Flowcharts C-1 and C-2 below.) Similarly, in Baden-Wurttemberg, Albrecht (1980) found that 64 percent of the fined offenders paid their fines without any enforcement action and that an additional 16 percent paid after just a reminder letter (46% of those who received them).

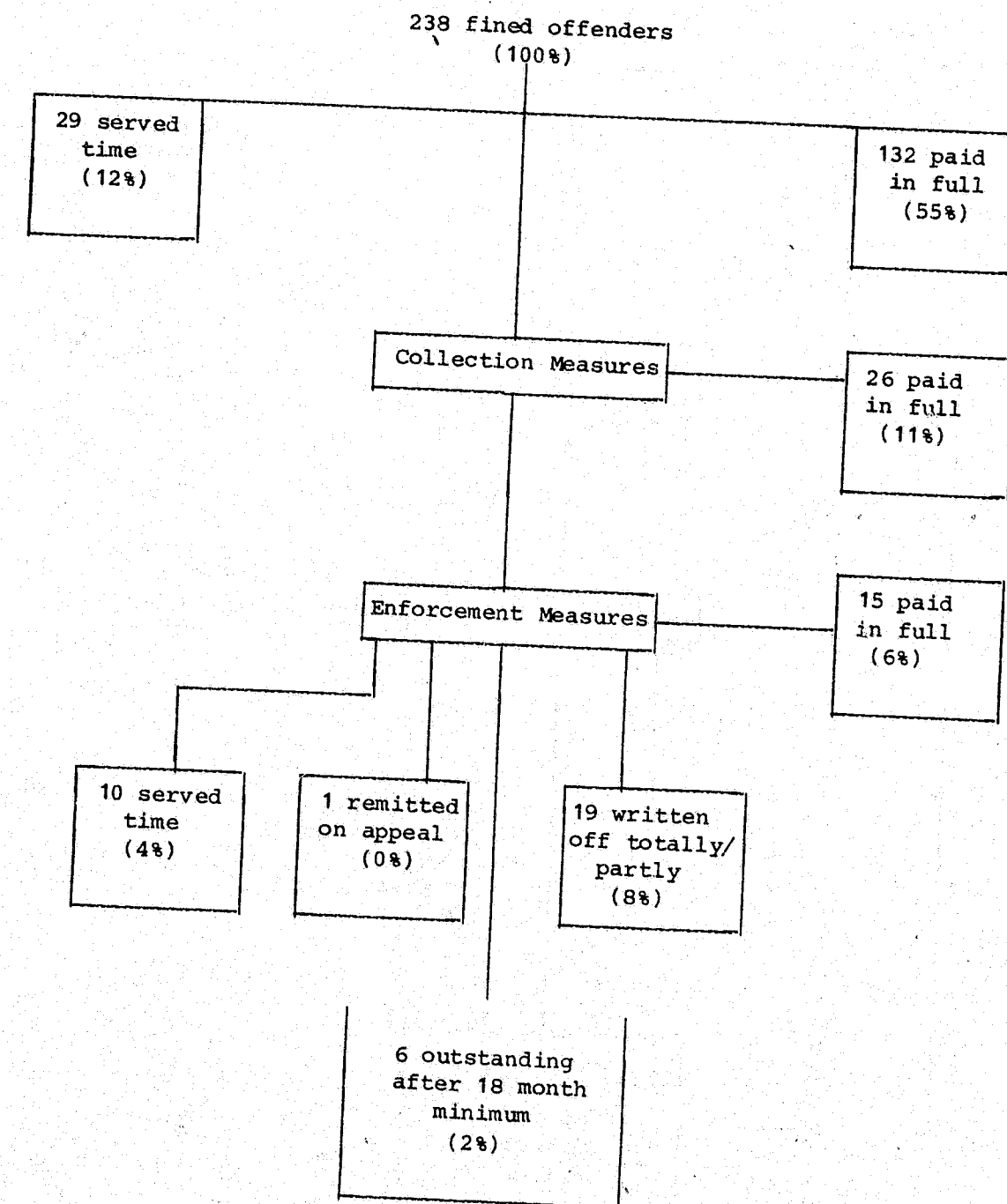
Nevertheless, more coercive techniques are also required to ensure minimal levels of non-payment. All three countries threaten the use of the same major methods to collect when fines are in arrears: garnishment of wages, seizure of property (distress), and committal to prison for nonpayment. However, they use these enforcement methods in differing degrees. Wage garnishment is used infrequently in all countries, but policies differ considerably with respect to the use of distress and committal.

¹⁴ In both Sweden and Germany, the collection agent is not the court or the police but the civil authorities who specialize in collection; in England, it is the courts and the police who enforce fines payments, but it has been proposed that a specialized office be set up and manned by trained social workers to deal with fine defaulters (Wilkins, 1979).

In Sweden, distress is the primary enforcement tool, and one that is very effective, according to conversations with Swedish authorities. Fines are treated like civil debts and means inquiries are used to identify willful defaulters whose property is then vigorously pursued. The Germans appear to use distress more sparingly (11% of fined offenders, according to the Albrecht sample (1980) and with modest success

FLOWCHART C-1

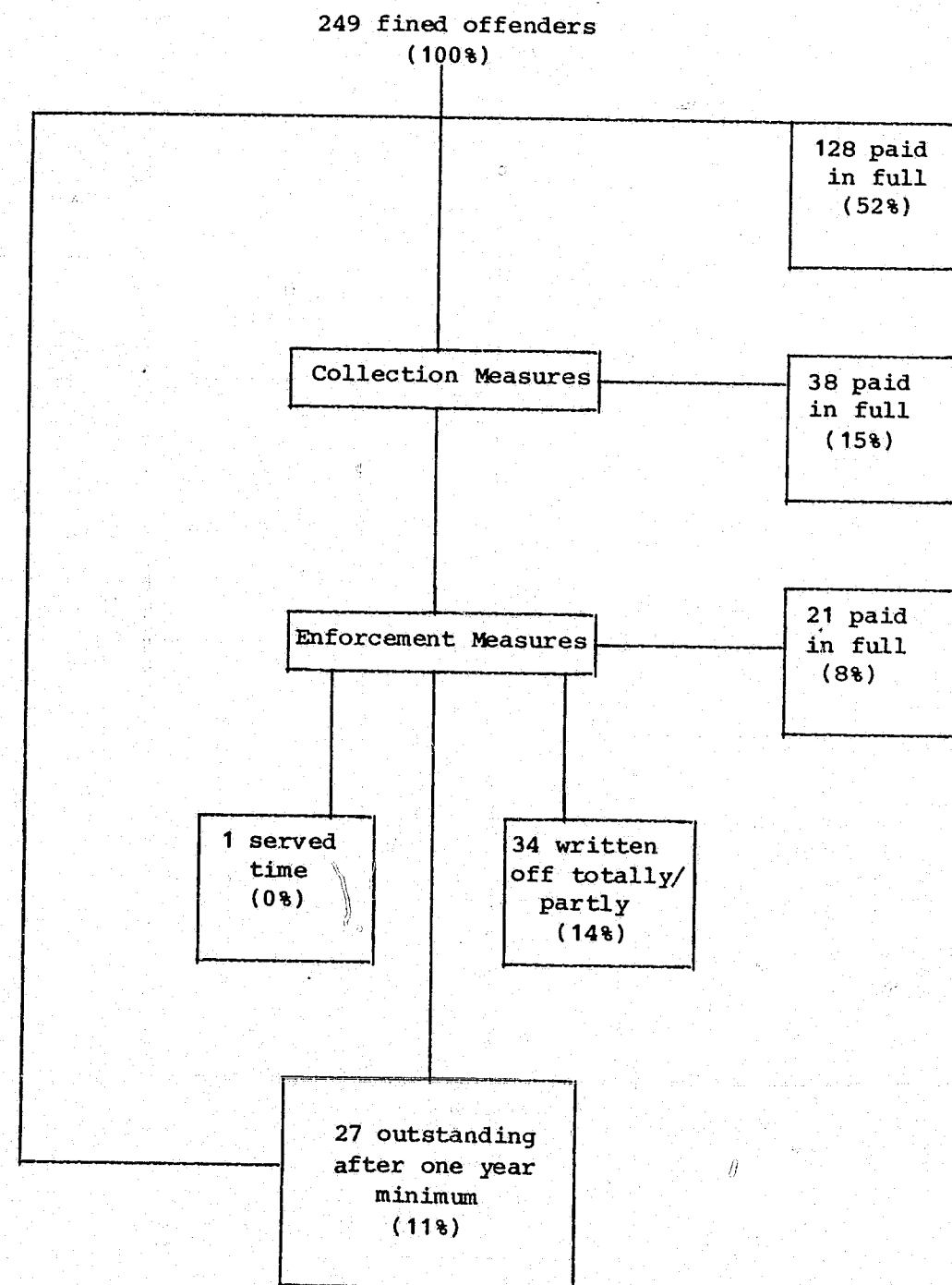
Payment/Collection/Enforcement Process at City Magistrates' Court



Source: Casale, 1981:44.

FLOWCHART C-2

Payment/Collection/Enforcement Process at Town Magistrates' Court



Source: Casale, 1981:45.

(about 20% resulted in payment). The English use distress rarely, although its use is increasing and certain courts already use it with great regularity.¹⁵ For example, in the town court studied by Casale (1981), 12 percent of the sample was faced with a distress warrant. This resulted in full payment by 38 percent of these offenders and partial payment by another 10 percent.¹⁶

Imprisonment is clearly the ultimate coercive recourse to elicit fine payments; alternatively, it can be a sentence imposed in lieu of payment. Although jailing defaulters occurs with different frequency in these countries, all take the position (though not without dissenting voices) that jail is a necessary threat behind any fine system, and none have outlawed its use with defaulters.

In Sweden, imprisonment is rarely used, perhaps because of their success with distress as a device to enforce payment. Indeed, as the use of distress has increased since the 1930s, imprisonment has decreased so that by 1979 only 17 out of the 27,737 people fined in Sweden were taken into custody for default (Rättstatistik orsbok, 1980). In England, imprisonment is more frequently used as an enforcement device. In 1979 alone, there were 17,044 prison receptions in England and Wales for fine default; this represents about 23 percent of the annual prison

¹⁵ Consequently, follow-up research being conducted by the Vera Institute's London Office on fine enforcement in Magistrates' Courts is focusing on at least one such court in order to ascertain how and why this method is selected.

¹⁶ Interestingly, in neither Germany nor England do we know whether payment was a result of actual sale of property seized, or a result of the threat of seizure having encouraged the defaulter to pay the fine. The Vera research currently underway in England hopes to determine this (see Chapter IV, footnote 17).

receptions (Prison Statistics, 1980).¹⁷ These figures are high in part because English courts fine so many offenders; however, the official proportion of all fined offenders incarcerated for nonpayment is not known. Casale's preliminary investigation of two Magistrates' Courts indicates that 12 percent of the offenders fined in the city court served time in lieu of fine payment immediately after sentence (many of them public inebriates); an additional two percent were imprisoned after enforcement efforts failed to result in payment but they paid the fine after serving a short time in jail and were released; finally, another four percent were imprisoned and served a sentence after enforcement efforts failed and they did not pay the fine (see Flow Chart C-1).

These data suggest, therefore, that about 18 percent of the fined offenders in this urban lower court spent at least some time in jail either in lieu of fine payment (16%) or before paying it (2%).

In substantial contrast, the data from the provincial town court studied by Casale suggest that only 0.4 percent of the fined offenders (few of whom were public inebriates) spent any time in jail; none were committed for nonpayment immediately after sentence, and most of those threatened with committal at a later point paid their fines before being jailed (see Flow Chart C-2).

This very preliminary research on England suggests, therefore, that there are substantial differences in the proportion of fine offenders who default and are imprisoned among English courts and probably across regions of the country. (This is also noted by Morgan and Bowles, 1981:205.) One factor affecting such differences may be the

¹⁷ Note that these figures represent prison receptions; most defaulters remain in custody for relatively short periods so they are not necessarily such a large proportion of the total prison population.

proportion of offenders in these lower courts who are "social inadequate," that is, those who repeatedly serve short-term sentences for fine default after conviction on charges such as drunkenness. There are data on England, in addition to Casale's work, that suggest this type of offender may represent a major group among those incarcerated for fine default (Wilkins, 1979; Sparks, 1971). While it appears unlikely that the English will soon decriminalize public drunkenness, it has been proposed that newly constituted fine enforcement offices (outside the courts) be staffed with specially trained social workers who may be able to assist this population and thus avoid their incarceration (Wilkins, 1979).¹⁸

The German system, on the other hand, has removed the offense of drunkenness from the criminal courts altogether. Nevertheless, while national statistics are lacking, research data suggests that in some regions 10 percent of the prison population is made up of fine defaulters but that over a third of them eventually get out of prison by paying the fine (Nüsslein, 1969). Albrecht's Baden-Wurttemberg study of the day-fine system (1980) indicates that four percent of fined offenders were imprisoned for default. However, threatening the defaulter with committal appears to be an effective means of enforcement in Germany: Albrecht founding that while 15 percent of the sample was issued a committal warrant, only four percent were, in fact, committed.

¹⁸ Another suggestion has been to create a holding center for fine defaulters who are awaiting commitment so that, prior to prison reception, alcoholics might be provided with assistance by social service persons and other defaulters, who can and will pay eventually, can have facilities to speed up their contact with family and friends (Wilkins, 1979).

The City Court sample studied by Casale shows a similar finding: 11 percent were issued a committal warrant for nonpayment but only four percent were actually committed.

Thus, like distress, jailing fine defaulters appears to work primarily, but not exclusively, by threat. Clearly, more research is needed in order to better understand all aspects of the enforcement processes and to demonstrate whether these admittedly limited European research findings are generalizable to other courts in their own systems and to American courts.

APPENDIX D

NEW YORK CITY CRIMINAL COURT: ONE-WEEK SAMPLE OF SENTENCED CASES

Original data collection was carried out on fine use, collection and enforcement in the five limited jurisdiction (misdemeanor) courts that comprise New York City's Criminal Court. A one-week sample of all 1,945 arrest cases that were sentenced in the criminal parts of these courts during one week in October 1979 was drawn and data were collected from official records. They include: arrest and sentence charge, sentence imposed, fine payment history, warrants for nonpayment, criminal history and, where available, employment status. Enforcement data are for up to one year post-sentence. (A similar sample of sentenced cases was drawn for the New York City Supreme Court--felony cases--but because so few fine sentences were imposed, data are not included here.)

This appendix contains selected tables; for a complete report on both the Criminal Court and Supreme Court samples and on interviews with selected practitioners, see Zamist, Working Paper #7, 1982.

TABLE D-1
SENTENCES BY CONVICTION CHARGE TYPE, BY COUNTY
A. NEW YORK COUNTY SAMPLE

| CONVICTION CHARGE TYPE | FINE ONLY | | FINE AND C.D., PROB. | | JAIL | | PROBATION | | TIME SERVED | | COND. DISCHARGE | | UNCOND. DISCHARGE | | TOTAL | |
|---------------------------|-----------|------|-------------------------|-----|------|------|-----------|------|----------------|------|--------------------|------|----------------------|------|-------|--------|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |
| Theft-related | 41 | 21.9 | - | -0- | 75 | 40.1 | 9 | 4.8 | 22 | 11.8 | 39 | 20.9 | 1 | 0.5 | 187 | 100.0% |
| Assault | 7 | 33.3 | - | -0- | 3 | 14.3 | 5 | 23.8 | 3 | 14.3 | 3 | 14.3 | - | -0- | 21 | 100.0% |
| Prostitution-related | 37 | 13.9 | - | -0- | 3 | 1.1 | - | -0- | 226 | 84.6 | 1 | 0.4 | - | -0- | 267 | 100.0% |
| Gambling | 33 | 53.2 | - | -0- | 16 | 25.8 | - | -0- | 5 | 8.1 | 8 | 12.9 | - | -0- | 62 | 100.0% |
| Dis. Con., Loitering | 29 | 18.4 | - | -0- | 2 | 1.3 | - | -0- | 46 | 29.1 | 60 | 38.0 | 21 | 13.3 | 158 | 100.1% |
| Trespass | 2 | 3.4 | - | -0- | 14 | 23.7 | 1 | 1.7 | 11 | 18.6 | 22 | 37.3 | 9 | 15.3 | 59 | 100.0% |
| Drugs | 20 | 20.4 | 3 | 3.1 | 18 | 18.4 | 6 | 6.1 | 19 | 19.4 | 27 | 27.6 | 5 | 5.1 | 98 | 100.1% |
| Motor Vehicle | 12 | 60.0 | - | -0- | - | -0- | - | -0- | - | -0- | 8 | 40.0 | - | -0- | 20 | 100.0% |
| Other | 7 | 14.0 | 2 | 4.0 | 12 | 24.0 | 3 | 6.0 | 15 | 30.0 | 8 | 16.0 | 3 | 6.0 | 50 | 100.0% |
| TOTAL: | 188 | 20.4 | 5 | 0.5 | 143 | 15.5 | 24 | 2.6 | 347 | 37.6 | 176 | 19.1 | 39 | 4.2 | 922 | 99.9% |

NOTE: One case was missing charge type.

CONTINUED:

TABLE D-1

SENTENCES BY CONVICTION CHARGE TYPE, BY COUNTY

B. BRONX COUNTY SAMPLE

| CONVICTION CHARGE TYPE | FINE ONLY | | FINE AND C.D., PROB. | | JAIL | | PROBATION | | TIME SERVED | | COND. DISCHARGE | | UNCOND. DISCHARGE | | TOTAL | |
|---------------------------|-----------|-------|-------------------------|------|------|------|-----------|------|----------------|------|--------------------|------|----------------------|-----|-------|--------|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |
| Theft-related | 5 | 11.1 | - | -0- | 16 | 35.6 | 10 | 22.2 | 1 | 2.2 | 13 | 28.9 | - | -0- | 45 | 100.0% |
| Assault | 1 | 8.3 | 2 | 16.7 | 4 | 33.3 | 4 | 33.3 | - | -0- | 1 | 8.3 | - | -0- | 12 | 99.9% |
| Prostitution-related | 13 | 86.7 | - | -0- | - | -0- | - | -0- | 1 | 6.7 | 1 | 6.7 | - | -0- | 15 | 100.1% |
| Gambling | 10 | 100.0 | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | 10 | 100.0% |
| Dis. Con., Loitering | 44 | 49.4 | 1 | 1.1 | 1 | 1.1 | - | -0- | 9 | 10.1 | 34 | 38.2 | - | -0- | 89 | 99.9% |
| Trespass | 6 | 18.8 | - | -0- | 9 | 28.1 | 2 | 6.3 | 6 | 18.8 | 9 | 28.1 | - | -0- | 32 | 100.1% |
| Drugs | 12 | 80.0 | - | -0- | - | -0- | - | -0- | - | -0- | 3 | 20.0 | - | -0- | 15 | 100.0% |
| Motor Vehicle | 13 | 56.5 | 1 | 4.3 | 1 | 4.3 | - | -0- | - | -0- | 8 | 34.8 | - | -0- | 23 | 99.9% |
| Other | 11 | 36.7 | 2 | 6.7 | 5 | 16.7 | 8 | 26.7 | - | -0- | 4 | 13.3 | - | -0- | 30 | 100.1% |
| TOTAL: | 115 | 42.4 | 6 | 2.2 | 36 | 13.3 | 24 | 8.9 | 17 | 6.3 | 73 | 26.9 | - | -0- | 271 | 100.0% |

NOTE: One case was missing charge type.

CONTINUED:

TABLE D-1
SENTENCES BY CONVICTION CHARGE TYPE, BY COUNTY
C. KINGS COUNTY SAMPLE

| CONVICTION CHARGE TYPE | FINE ONLY | | FINE AND C.D., PROB. | | JAIL | | PROBATION | | TIME SERVED | | COND. DISCHARGE | | UNCOND. DISCHARGE | | TOTAL | |
|---------------------------|-----------|-------|-------------------------|------|------|------|-----------|------|----------------|------|--------------------|------|----------------------|-----|-------|--------|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |
| Theft-related | 6 | 6.3 | 1 | 1.1 | 36 | 37.9 | 21 | 22.1 | 1 | 1.1 | 28 | 29.5 | 2 | 2.1 | 95 | 100.1% |
| Assault | 1 | 8.3 | - | -0- | 6 | 50.0 | 1 | 8.3 | - | -0- | 4 | 33.3 | - | -0- | 12 | 99.9% |
| Prostitution-related | 14 | 35.9 | - | -0- | 14 | 35.9 | - | -0- | 8 | 20.5 | 3 | 7.7 | - | -0- | 39 | 100.0% |
| Gambling | 10 | 100.0 | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | 10 | 100.0% |
| Dis. Con., Loitering | 37 | 29.8 | 3 | 2.4 | 10 | 8.1 | - | -0- | 2 | 1.6 | 68 | 54.8 | 4 | 3.2 | 124 | 99.9% |
| Trespass | 9 | 16.7 | 1 | 1.9 | 16 | 29.6 | 8 | 14.8 | 2 | 3.7 | 17 | 31.5 | 1 | 1.9 | 54 | 100.1% |
| Drugs | 3 | 23.1 | 4 | 30.8 | - | -0- | 2 | 15.4 | - | -0- | 4 | 30.8 | - | -0- | 13 | 100.1% |
| Motor Vehicle | 26 | 68.4 | 3 | 7.9 | - | -0- | - | -0- | - | -0- | 8 | 21.1 | 1 | 2.6 | 38 | 100.0% |
| Other | 2 | 5.3 | 3 | 7.9 | 9 | 23.7 | 9 | 23.7 | - | -0- | 14 | 36.8 | 1 | 2.6 | 38 | 100.0% |
| TOTAL: | 108 | 25.5 | 15 | 3.5 | 91 | 21.5 | 41 | 9.7 | 13 | 3.1 | 146 | 34.5 | 9 | 2.1 | 423 | 99.9% |

CONTINUED:

TABLE D-1

SENTENCES BY CONVICTION CHARGE TYPE, BY COUNTY

D. QUEENS COUNTY SAMPLE

| CONVICTION CHARGE TYPE | FINE ONLY | | FINE AND C.D., PROB. | | JAIL | | PROBATION | | TIME SERVED | | COND. DISCHARGE | | UNCOND. DISCHARGE | | TOTAL | |
|---------------------------|-----------|------|-------------------------|------|------|------|-----------|------|----------------|------|--------------------|------|----------------------|-----|-------|--------|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |
| Theft-related | 7 | 11.9 | 1 | 1.7 | 37 | 62.7 | 6 | 10.2 | 1 | 1.7 | 6 | 10.2 | 1 | 1.7 | 59 | 100.1% |
| Assault | 1 | 20.0 | 2 | 40.0 | 2 | 40.0 | - | -0- | - | -0- | - | -0- | - | -0- | 5 | 100.0% |
| Prostitution-related | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- |
| Gambling | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- |
| Dis. Con., Loitering | 54 | 46.6 | 16 | 13.8 | 5 | 4.3 | - | -0- | 3 | 2.6 | 34 | 29.3 | 4 | 3.4 | 116 | 100.0% |
| Trespass | 4 | 20.0 | - | -0- | 6 | 30.0 | 3 | 15.0 | 3 | 15.0 | 3 | 15.0 | 1 | 5.0 | 20 | 100.0% |
| Drugs | 15 | 75.0 | 1 | 5.0 | 1 | 5.0 | - | -0- | 1 | 5.0 | 1 | 5.0 | 1 | 5.0 | 20 | 100.0% |
| Motor Vehicle | 26 | 65.0 | 5 | 12.5 | - | -0- | - | -0- | - | -0- | 8 | 20.0 | 1 | 2.5 | 40 | 100.0% |
| Other | 4 | 30.8 | - | -0- | 3 | 23.1 | 2 | 15.4 | 1 | 7.7 | 3 | 23.1 | - | -0- | 13 | 100.1% |
| TOTAL: | 111 | 40.7 | 25 | 9.2 | 54 | 19.8 | 11 | 4.0 | 9 | 3.3 | 55 | 20.1 | 8 | 2.9 | 273 | 100.0% |

CONTINUED:

TABLE D-1
SENTENCES BY CONVICTION CHARGE TYPE, BY COUNTY

E. RICHMOND COUNTY SAMPLE

| CONVICTION CHARGE TYPE | FINE ONLY | | FINE AND C.D., PROB. | | JAIL | | PROBATION | | TIME SERVED | | COND. DISCHARGE | | UNCOND. DISCHARGE | | TOTAL | |
|---------------------------|-----------|-------|-------------------------|------|------|-------|-----------|-----|----------------|-----|--------------------|-------|----------------------|-----|-------|--------|
| | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % | No. | % |
| Theft-related | 2 | 11.8 | - | -0- | 13 | 76.5 | - | -0- | - | -0- | 2 | 11.8 | - | -0- | 17 | 100.1% |
| Assault | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | 2 | 100.0 | - | -0- | 2 | 100.0% |
| Prostitution-related | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- |
| Gambling | 2 | 100.0 | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- |
| Dis. Con., Loitering | 15 | 83.3 | 1 | 5.6 | 1 | 5.6 | - | -0- | - | -0- | - | -0- | - | -0- | 2 | 100.0% |
| Trespass | 1 | 20.0 | 1 | 20.0 | 2 | 40.0 | - | -0- | - | -0- | 1 | 5.6 | - | -0- | 18 | 100.1% |
| Drugs | - | -0- | - | -0- | 1 | 100.0 | - | -0- | - | -0- | 1 | 20.0 | - | -0- | 5 | 100.0% |
| Motor Vehicle | 3 | 50.0 | 3 | 50.0 | - | -0- | - | -0- | - | -0- | - | -0- | - | -0- | 1 | 100.0% |
| Other | - | -0- | - | -0- | 2 | 66.7 | - | -0- | - | -0- | - | -0- | - | -0- | 6 | 100.0% |
| | | | | | | | | | | | 1 | 33.3 | - | -0- | 3 | 100.0% |
| TOTAL: | 23 | 42.6 | 5 | 9.3 | 19 | 35.2 | - | -0- | - | -0- | 7 | 13.0 | - | -0- | 54 | 100.1% |

TABLE D-2

JAIL DAYS SPECIFIED AS ALTERNATIVES TO
FINES BY FINE AMOUNTS, CITYWIDE SAMPLE

| <u>JAIL ALTERNATIVE (DAYS)</u> | <u>\$0-25</u> | <u>\$26-50</u> | <u>\$51-75</u> | <u>\$76-100</u> | <u>\$101-250</u> | <u>\$250-500</u> | <u>OVER \$500</u> |
|------------------------------------|---------------|----------------|----------------|-----------------|------------------|------------------|-------------------|
| 0-5 | 97 | 71 | 9 | 15 | 11 | - | - |
| 10 | 4 | 45 | 9 | 51 | 4 | 1 | - |
| 15 | 16 | 31 | 4 | 21 | 14 | - | - |
| 20 | - | 6 | 4 | 2 | 4 | - | - |
| 25 | - | - | - | 1 | 1 | - | - |
| 30-60 | - | 7 | 2 | 31 | 46 | 11 | 2 |
| 90 | - | - | - | - | 6 | 7 | 4 |
| TOTAL | 117 | 160 | 28 | 121 | 86 | 19 | 6 |

Note. There were 64 cases for which no jail time was specified. Most were fines used with conditional discharge, which lets the threat of violation of conditions act to enforce payment. A handful were §221.05 of the Penal Law, for which jail is not authorized.

TABLE D-3

FINES AMOUNTS BY CONVICTION CHARGE TYPE,
CITYWIDE SAMPLE

| CONVICTION CHARGE TYPE* | \$0-25 | \$26-50 | \$51-75 | \$76-100 | \$101-250 | \$251-500 | OVER \$500 | TOTAL |
|----------------------------|--------|---------|---------|----------|-----------|-----------|------------|-------|
| Theft-related | 9 | 10 | 3 | 25 | 15 | - | 1 | 63 |
| Assault | - | 4 | - | 7 | 3 | - | - | 14 |
| Prostitution-related | 25 | 23 | 1 | 1 | 13 | 1 | - | 64 |
| Gambling | - | 14 | 3 | 18 | 10 | 7 | 3 | 55 |
| Dis. Con., Loitering | 51 | 54 | 15 | 51 | 28 | 1 | - | 200 |
| Trespass | 6 | 7 | - | 8 | 2 | 1 | - | 24 |
| Drugs | 4 | 19 | 2 | 8 | 13 | 11 | 1 | 58 |
| Motor Vehicle | 24 | 35 | 6 | 23 | 4 | - | - | 92 |
| Other | 4 | 9 | 2 | 7 | 7 | 1 | 1 | 31 |
| TOTAL | 123 | 175 | 32 | 148 | 95 | 22 | 6 | 601 |

*The median fine amount for violations and Class B misdemeanors is \$50; for Class A Misdemeanors it is \$500.

TABLE D-4
FINED OFFENDERS WHO PAID IN FULL^a FOR
EACH CONVICTION CHARGE BY COUNTY SAMPLES

| CONVICTION CHARGE TYPE | NEW YORK | | BRONX | | KINGS | | QUEENS | | CITYWIDE | |
|---------------------------|----------|-------|--------|-------|--------|-------|--------|-------|----------|------|
| | No. | % | No. | % | No. | % | No. | % | No. | % |
| Theft-related | 17 | 41.5 | 4 | 80.0 | 3 | 42.9 | 4 | 50.0 | 29 | 46.0 |
| Assault | 6 | 85.7 | 2 | 66.7 | 1 | 100.0 | 3 | 100.0 | 12 | 85.7 |
| Prostitution-related | 13 | 35.1 | 4 | 30.8 | 4 | 28.6 | b | -0- | 21 | 32.8 |
| Gambling | 24 | 72.7 | 10 | 100.0 | 9 | 90.0 | b | -0- | 45 | 81.8 |
| Dis. Con., Loitering | 24 | 82.8 | 26 | 57.8 | 33 | 82.5 | 48 | 68.6 | 143 | 71.5 |
| Trespass | 2 | 100.0 | 2 | 33.3 | 6 | 60.0 | 4 | 100.0 | 14 | 58.3 |
| Drugs | 12 | 52.2 | 6 | 50.0 | 4 | 57.1 | 14 | 87.5 | 36 | 62.1 |
| Motor Vehicle | 9 | 75.0 | 13 | 92.2 | 20 | 69.0 | 27 | 87.1 | 75 | 81.5 |
| Other | 7 | 77.8 | 6 | 46.2 | 5 | 100.0 | 4 | 100.0 | 22 | 71.0 |
| TOTAL PAID IN FULL | 114 | 59.1 | 73 | 60.3 | 85 | 69.1 | 104 | 76.4 | 397 | 66.1 |
| TOTAL FINED OFFENDERS | N= 193 | | N= 121 | | N= 123 | | N= 136 | | N= 601 | |

^a Excludes the 3 represented to reduced amounts.

^b There were no fined offenders convicted for these charges.

Note. There were too few cases in each category in Richmond to calculate percentages.

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