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# STATEN ISLAND ECONOMIC SANCTIONS PROJECT

## PRELIMINARY DATA REPORT DAY-FINE PILOT PROJECT

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## INTRODUCTION

The Staten Island day-fine experiment has now completed three months of pilot operations. (The first day-fine was imposed on August 12, 1988.) A review of preliminary data gives evidence that introduction of the day-fine system has resulted in increased use of fines in sentencing criminal offenders -- and indicates that, if collection rates remain stable, the amount of City general fund revenues derived from fines will significantly increase under the new system. The findings also give strong reason to believe that revenues could more than double if the legislature raised statutory fine maxima above their current low levels, thereby enabling the day-fine system to have its full impact in determining fine amounts.<sup>1</sup>

First developed in Scandinavia in the 1920's and 30's, and introduced to West Germany during the broad-scale policy shift in the late 1960's and early 1970's when fines were substituted for short terms of incarceration, the day-fine system rests upon a simple two-step process in setting the fine amount that embraces both proportionality and equity. First, the court sentences the offender to a certain number of day-fine units (e.g., 15, 60, 120 units) according to the gravity of the offense, but without regard to his or her means. Then the value of each unit is set at a share of the offender's daily income (hence the name "day-fine"), and the total fine amount is determined by simple multiplication. The percentage share of income used in valuing the day-fine units varies across the different countries which use this system, as do methods for accounting for capital wealth or family responsibilities, but the basic idea assures routine imposition of equitable fine sentences, the punitive impact of which is in proportion to the crime.

The primary goal of the pilot project is to demonstrate the feasibility of the day-fine concept as a replacement for the fixed-sum fines traditionally utilized in American sentencing practice. During the first three months of pilot operations, 139 day-fines were imposed as sentences for Penal Law offenses disposed in the court. These day-fines represented eighty-six percent of all Penal Law fine sentences.<sup>2</sup> The high proportion of day-fines indicates that the basic features of the day-fine system are workable. It suggests further that, as the day-fine system is refined and court officials become more familiar with its operation, the day-fine can completely replace fixed-sum fines in Penal Law cases.

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<sup>1</sup>New York Penal Law section 80.05 sets the maximum fine amounts for use by Criminal Court judges at \$1000 for an A misdemeanor; \$500 for a B misdemeanor; and \$250 for a violation. These maxima were set in 1965, and have not been adjusted for inflation.

<sup>2</sup>Conversations with court officials regarding the twenty-three cases which resulted in fix-sum fines indicate that eleven of these cases resulted from plea bargains where an Assistant District Attorney negotiated a specific fixed-

## COMPARISONS WITH PRIOR SENTENCING PATTERNS

The Vera Institute's Research Department is conducting a comprehensive, multi-dimensional evaluation of the day-fine experiment. This assessment will incorporate interviews and observations with complex quantitative comparisons and statistical modeling techniques to provide a thorough analysis of the impact of the reform. Preliminary results from this effort, however, will not become available for many months.

In the meantime, project planners have been collecting data about each day-fine case from court records in order to track the results of implementation of new procedures as the system is refined and streamlined. To assure that this developmental effort is realistically grounded in practice, planners also collected basic data from court calendars for all Penal Law cases which resulted in fixed-sum fines during a six-month period shortly before the new day-fine system was initiated. This "pre-test" sample is comprised of 175 fines which were recorded on the Arraignment, AP-1, and AP-2 calendars from November 21, 1987, to May 20, 1988. These two sets of fine case data have enabled planners to make simple comparisons that illuminate some of the shifts in fine usage which have occurred since introduction of the day-fine system.<sup>3</sup>

Comparisons between the volume of fines imposed during the two periods of time studied can give some indication of the utility of the day-fine system, and can help to determine whether the new procedures create an incentive (or a disincentive) to selection of the fine as a sentencing option. Comparisons between the total dollar amounts ordered, and the average fine amounts that result can give evidence of what overall impact the new system will have on fine revenues. Comparison of data which portray the variety of specific dollar values chosen within the statutorily permissible ranges can help to detect whether judges are using the day-fine method as it was intended to differentiate between fined offenders on the basis of their means (rather than manipulating the new procedures to replicate existing informal tariffs -- i.e., retaining the established "going

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sum fine amount. (Eight of these "sentence bargains" involved fine amounts set below the statutory maximum allowed; in only three cases did the ADA negotiate the maximum possible fine amount. As the ADAs have become more familiar with the day-fine procedures and as the new system has begun to be incorporated within the plea bargaining norms of the court, fixed-sum fines are being imposed less frequently.) Six fixed-sum fines were imposed by a Brooklyn judge who was assigned to the Staten Island for one day and who was unfamiliar with the new system. Two fixed-sum fines resulted because the offenders had been arraigned and convicted on Penal Law charges which had not appeared among the sample of cases used to construct the day-fine benchmark scales; these charges have since been assigned a prescribed number of day-fine units and are being added to a revised version of the scales. Two more fixed-sum fines resulted as part of a "package deal" for Penal Law offenses which were coupled with Vehicle and Traffic Law offenses disposed at the same time; because the day-fine system has not been extended to cover VTL cases, fixed-sum fines were given. In two cases the reasons for fixed-sum fines were not determined.

<sup>3</sup>In these simple analyses, planners have compared the 175 fixed-sum fine cases from the pre-test sample with the 139 day-fines imposed during the first three months of pilot operations. The twenty-three fixed-sum fines imposed during the pilot period have not been included in the comparisons. If they had been included, some comparisons would appear even more favorable. For example, the increase in fine usage of fifty-eight percent (discussed on page

rates" for specific offenses). Finally, comparison of the arraignment charges in cases which draw the fine as a sentence can illustrate whether the day-fine method is causing shifts in the application of the fine sentence, as measured in terms of offense severity and charge type.

## INCREASES IN FINE USAGE

It appears that fines may be being used more frequently as sentences since the introduction of the day-fine. Fine sentences were imposed in an average of eighty-eight Penal Law cases per quarter during the six-month pre-test period. In contrast, day-fines were imposed in 139 Penal Law cases during the first quarter of pilot operations -- an increase of fifty-eight percent. Caution is needed in interpreting these data, however. Without more complete data from each of the comparison periods (which the evaluation will provide) it is not possible to know whether this increase is attributable to introduction of the new fining system. An increase in the number of fines imposed during these different time periods could be a result of an overall increase in the number of cases handled by the court, for example, or to an increase in the number of cases reaching disposition. Furthermore, the increase could be the product of the "Hawthorne effect": it has often been found that there is a stimulation of output that results during experimentation simply from the fact of being under observation. Nevertheless, when this finding is examined in the context of other shifts in the patterns of fine usage described below -- it is reasonable to be encouraged by the apparent expanded use of fines.

As can be seen in Table 1, the total dollar amounts ordered by the court have risen markedly since the introduction of the day-fine system. The total amount ordered averaged \$19,705 per quarter during the pre-test period. The total dollar amount ordered during the first quarter of the pilot period was \$29,566 -- an increase of fifty percent. However, as about one-third of the day-fines were "capped" below the dollar amounts which resulted from the judges' computations because of the relatively low statutory maxima provided in New York Penal Law (see footnote 2, Table 1) and because of plea-negotiation practices (described below) which cause the bulk of fine sentences to be imposed for conviction charges at the violation level, average fine amounts have not risen much despite the increase in the total amount of fine dollars ordered since the introduction of the day-fine system. As can be seen in Table 1, median fine amounts increased by twenty percent during this period (\$180 compared to \$150), while mean fine

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3) would rise to an increase of eighty-four percent with the addition of the twenty-three fixed-sum fines. Further, because the "pre-test" period was a full six months of data and the "day-fine" period was three months, where necessary for comparison the pre-test figures were totaled and divided by two -- thus creating an estimate of an "average" pre-test quarter.

TABLE 1

COMPARISON OF FINE AMOUNTS IN PRE-TEST AND IN DAY-FINE PERIODS<sup>1</sup>

	<u>N</u>	<u>TOTAL DOLLARS IMPOSED</u>	<u>MINIMUM FINE IMPOSED</u>	<u>MAXIMUM FINE IMPOSED</u>	<u>MEAN AVERAGE FINE IMPOSED</u>	<u>MEDIAN FINE IMPOSED</u>
Pre-Test Data-Sample (Two Quarters):	175	\$39,409 <sup>2</sup>	\$25	\$1000	\$226	\$150
1st Quarter Day-Fines; Actual Amounts Imposed:	139	29,566	20	1000	212	180
1st Quarter Day-Fines; "Un-Capped" Amounts <sup>3</sup> :	139	49,760	20	2946	365	191

<sup>1</sup>The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars during a six-month period (two quarters) from November 21, 1987 to May 20, 1988. The day fine sample is comprised of all 139 day fines imposed in Penal Law cases during the first quarter of the pilot year, from August 12, 1988 to November 11, 1988. All amounts in this and other tables are rounded off to the nearest dollar.

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

<sup>3</sup>In forty-seven of 139 day-fine cases (thirty-four percent) the dollar amount of the day fines imposed was less than it would have been if there were no statutory maxima. In these cases, the judges were obligated to "cap" the day fine at the maximum allowed under the Penal Law. The difference between the "capped" and "uncapped" fine amounts in these cases ranged from \$25.00 to \$1946.00; the average difference was \$439.00.

amounts decreased slightly. Therefore, in the early days of the pilot, the fifty-percent increase in the total value of the fines imposed appears attributable largely to the court's increased use of fines under the day-fine system.

Some explanation of these findings is in order. In using the day-fine method to set the total amount of a fine, the number of day-fine units imposed in a particular case (as determined by the seriousness of the criminal activity involved) is multiplied by the value of each unit (set by the judge to reflect a fair share of an individual offender's daily net income). Therefore it is not unlikely that in more serious cases and for more affluent offenders, a judge will find the dollar amount of the day-fine exceeding the maximum fine amount allowed under the New York State Penal Law, as these limits have not been changed since 1965, despite substantial inflation.

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

During the first quarter of pilot operations, forty-seven "capped" day-fines were imposed, comprising thirty-four percent of all day-fines. In three of these cases the day-fine was capped at the \$1000 limit for an A misdemeanor, as illustrated above. In two cases, the conviction was for a B misdemeanor so the fine was capped at the statutory limit of \$500. In the remaining cases the offender was convicted of a violation, so the cap was \$250.

As can be seen in Table 1, if the State's statutory fine maxima allowed the day-fines to vary freely according to the benchmark scales and offender means, the mean fine amount would have been \$365, sixty-two percent higher than the \$226 mean for the pre-test period. Furthermore, this increase in average fine amounts, when coupled with the more frequent use of the fine as a sentence, would have caused total court-ordered fine dollars to increase by 153 percent (from a pre-test average of \$19,705 per quarter to the first quarter pilot total of \$49,760).

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

TABLE 2

COMPARISON OF FINE AMOUNTS IN PRE-TEST AND IN DAY-FINE PERIODS<sup>1</sup>

<u>ACTUAL DOLLAR AMOUNTS IMPOSED</u>	<u>PRE-TEST DATA SAMPLE</u>		<u>FIRST QUARTER DAY-FINES<sup>2</sup></u>	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
\$ 20			1	0.7
25	4	2.3	4	2.9
30			1	0.7
35			1	0.7
45			1	0.7
50	24	13.7	9	6.5
59	1	0.6		
60			2	1.4
65			1	0.7
73			1	0.7
75	13	7.4	4	2.9
80			1	0.7
85			3	2.2
87			1	0.7
100	38	21.7	14	10.1
110			2	1.4
115			1	0.7
120			3	2.2
125			1	0.6
130			1	0.7
138			1	0.7
140			4	2.9
150	10	5.7	6	4.3
160			1	0.7
170			4	2.9
175	1	0.6		
180			4	2.9
200	14	8.0	4	2.9
220			1	0.7
225	3	1.7		
230			1	0.7
232			1	0.7
235			1	0.7
250	40	22.9	44	31.7
300			1	0.7

TABLE 2

COMPARISON OF FINE AMOUNTS IN PRE-TEST AND IN DAY-FINE PERIODS  
(CONT)

ACTUAL DOLLAR AMOUNTS IMPOSED	PRE-TEST DATA SAMPLE		FIRST QUARTER DAY-FINES <sup>2</sup>	
	N	%	N	%
320			1	0.7
350	2	1.1		
387			1	0.7
425			1	0.7
450	1	0.6	1	0.7
500	9	5.1	5	3.6
750	2	1.1	2	1.4
924			1	0.7
950	3	1.7		
1000	8	4.6	3	2.2
UNK	1	0.6		

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<sup>1</sup>The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The day-fine sample is comprised of all 139 day-fines imposed in Penal Law cases from August 12, 1988 to November 11, 1988.

<sup>2</sup>The expected dispersion of fine amounts after introduction of the day-fine system has produced an array of dollar amounts with almost no clustering at the previously dominant dollar figures. Two "peaks" still appear along the continuum of day-fine amounts, however, at \$100 and \$250. As discussed in the text, the \$250 cluster is caused by the capping of fines in violation cases due to the current statutory maximum. Reasons for the cluster at \$100 are less clear; some of these day-fines were produced when judges rounded off dollar amounts which fell close to the \$100 mark.

percent of the fined cases had been reduced to violations. During the day-fine period, eighty-one percent were reduced to violations.

There are a variety of reasons why a case may result in a violation charge at disposition. In some cases, the evidence may not clearly meet the standard of proof required for a criminal conviction, yet the offender may admit to a violation offense such as disorderly conduct. Even when there is clear evidence of criminal conduct, however, a judge may feel that the offender should be spared a record of criminal conviction in the case if he or she is someone with little or no prior record. This is a frequent practice in the Staten Island court.

In cases in which a conviction for a violation occurs to "give a break" to a deserving offender a judge may wish nonetheless to impose a fine penalty in an amount that reflects the seriousness of the provable criminal conduct. In other cases, the judge would impose the more nominal sum that is warranted where all the evidence only sustains the violation charge (such as disorderly conduct). When the former circumstances have arisen during the early days of the day-fine experiment, judges have tended to determine the number of day-fine units in accordance with the benchmark scale appropriate for the misdemeanor charge for which the offender could have been convicted rather than the lower number prescribed for the violation-level offense for which the offender was sentenced after a plea. This practice was followed in fifty-three of the 139 day-fine cases, and accounted for thirty-seven of the forty-seven capped fines.

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

Table 2 illustrates, therefore, a second important effect of introduction of the day-fine method. During the pre-test period, fines did tend to cluster at a limited number of specific dollar values within the statutory permissible range of \$1 to \$1000. Fourteen percent of those fixed-sum fines were set at \$50; seven percent were at \$75; twenty-two percent at \$100; and so on. As expected, however, introduction of the day-fine method diminished this clustering effect. Despite the judges common practice of rounding off the day-fine amounts (e.g., a day-fine of \$48 becomes \$50) only six percent were set at \$50; three percent at \$75; and ten percent at \$100. Under the day-fine system there were fine amounts set at thirty-nine specific dollar values within the permitted range (compared with seventeen during the pre-test period). Absent the statutory caps, this disper-

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<sup>4</sup>In contrast, despite a formal shift to the day -fine method, judges could have attempted to retain the fining patterns inherent in the old system by "backing into" pre-determined fine amounts through manipulation of the figures they use in setting fine amounts.

sion effect of the day-fine system would have been even more pronounced because the bulk of the forty-four fines set at \$250 would have been spread across a wider and higher range as determined by the day-fine method.

This dispersion, coupled with the increases in average fine amounts, suggests that judges are, for the most part, using the day-fine method as it was intended – to differentiate more widely among fined offenders on the basis of their means.<sup>4</sup>

## TYPES OF OFFENSES SANCTIONED WITH FINES

Another important dimension of the day-fine's impact is revealed in a comparison between the pre-test period and first quarter of the pilot in regard to the range of offense severity and the range of offense types drawing a fine sentence. Table 3 shows the distribution of Penal Law offenses which appear as arraignment charges in cases that received fine sentences before and after the introduction of the day-fine system. In Table 4 these arraignment charges are sorted into the severity classes provided in New York State Penal Law (i.e., D felonies, A misdemeanors, violations, etc.)

It can be seen that the introduction of the day-fine has not had much (if any) effect on fine use patterns in terms of the charge severity of offenses drawing a fine sentence. The majority of offenders fined during both periods were arraigned on class A Misdemeanor charges: seventy-one percent during the pre-test period; and somewhat less (sixty-six percent) during the day-fine period. The proportion of offenders arraigned on felony charges was the same (twenty-five percent) during both periods. The proportion of offenders arraigned for class B misdemeanors and violations rose slightly.

The data displayed here is drawn from the early weeks of the experiment, during which judges and lawyers were testing out the new procedures. The question remains open whether, as confidence in the day-fine system grows, the court will begin to apply the new sentence to a broader range of cases in terms of charge severity.

In contrast, an examination of arraignment offenses by charge type does show some shifts in the types of offenses drawing a fine sentence since the introduction of the day-fine system than were seen among severity classes. Table 5 compares arraignment charges for both periods in terms of the type of offense charge. The cases are sorted among the four offense-type categories created by project planners in developing the day-fine benchmark scales for use in the experiment: 1) Property and theft offenses; 2) Offenses involving harm or threat of harm to persons; 3) Offenses involving drugs or contraband; and 4) Misconduct, obstruction, and sex offenses.

TABLE 3

COMPARISON OF ARRAIGNMENT CHARGES BETWEEN PRE-TEST AND DAY-FINE PERIODS<sup>1</sup>

<u>PENAL LAW CHARGE</u>	<u>DESCRIPTION</u>	<u>NUMBER IMPOSED IN PRE-TEST PERIOD</u>		<u>NUMBER IMPOSED IN DAY-FINE PERIOD</u>	
		<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
120.00 AM	Assault 3	8	4.6	16	11.5
120.05 DF	Assault 2	10	5.7	8	5.8
120.15 BM	Menacing			3	2.2
120.20 AM	Reckless Endangerment 2	1	0.6	1	0.7
130.60 AM	Sexual Abuse 2			3	2.2
140.05 VIO	Trespass			1	0.7
140.10 BM	Criminal Trespass 3	1	0.6	1	0.7
140.20 DF	Burglary 3	1	0.6	1	0.7
140.25 CF	Burglary 2	1	0.6	1	0.7
140.35 AM	Poss. of Burglary Tools			2	1.4
145.00 AM	Criminal Mischief 4	3	1.7	1	0.7
145.05 EF	Criminal Mischief 3			1	0.7
150.10 CF	Arson 3			1	0.7
110/155.30 AM	Attempted Grand Larceny			3	2.2
155.25 AM	Petit Larceny	20	11.4	15	10.8
155.30 EF	Grand Larceny 4	5	2.9	3	2.2
160.05 DF	Robbery 3	1	0.6		
110/160.10 DF	Attempted Robbery 2			1	0.7
160.10 CF	Robbery 2	1	0.6		
165.00 AM	Misapplication of Property	1	0.6		
165.05 AM	Unauth. Use of a Vehicle	3	1.7	2	1.4
165.09 AM	Auto Stripping 2			1	0.7
165.40 AM	Poss. of Stolen Property 5	7	4.0	7	5.0
165.45 EF	Poss. of Stolen Property 4	2	1.1	3	2.2
165.50 DF	Poss. of Stolen Property 3	2	1.1	2	1.4
170.10 DF	Forgery 2	1	0.6	1	0.7
170.20 AM	Poss. of Forged Insts. 3	1	0.6	4	2.9
170.25 DF	Poss. of Forged Insts. 2	1	0.6	1	0.7
175.30 AM	Offering a False Inst.	1	0.6		
176.20 DF	Insurance Fraud 3	2	1.1	1	0.7
190.25 AM	Criminal Impersonation 2	3	1.7	4	2.9
195.05 AM	Obstructing Govt. Admin. 2	2	1.1	4	2.9
200.25 EF	Receiving Reward 2	1	0.6		
205.30 AM	Resisting Arrest	12	6.9	8	5.8

TABLE 3

## COMPARISON OF ARRAIGNMENT CHARGES BETWEEN PRE-TEST AND DAY-FINE PERIODS (CONT)

PENAL LAW CHARGE	DESCRIPTION	NUMBER IMPOSED IN PRE-TEST PERIOD		NUMBER IMPOSED IN DAY-FINE PERIOD	
		N	%	N	%
215.50 AM	Criminal Contempt 2	1	0.6		
220.03 AM	Poss. of Cont. Substance 7	26	14.9	9	6.5
220.06 DF	Poss. of Cont. Substance 5	1	0.6		
220.09 CF	Poss. of Cont. Substance 4			2	1.4
220.16 BF	Poss. of Cont. Substance 3			2	1.4
220.39 BF	Sale of Cont. Substance 3	3	1.7	1	0.7
220.45 AM	Poss. of a Hypo. Instr.			1	0.7
221.05 VIO	Poss. of Marijuana	1	0.6	2	1.4
221.10 BM	Poss. of Marijuana 5	2	1.1		
221.25 DF	Poss. of Marijuana 2	2	1.1		
221.40 AM	Sale of Marijuana 4	11	6.3	3	2.2
225.10 EF	Promoting Gambling 2	2	1.1		
225.30 AM	Poss. of a Gambling Device	4	2.3	1	0.7
240.20 VIO	Disorderly Conduct	3	1.7	1	0.7
240.25 VIO	Harassment			1	0.7
240.30 AM	Aggravated Harassment 2	1	0.6		
240.37 AM	Loitering for Prostitution	1	0.6	1	0.7
245.00 BM	Public Lewdness			1	0.7
250.05 EF	Eavesdropping			1	0.7
265.01 AM	Possession of a Weapon 4	8	4.6	5	3.6
265.02 DF	Possession of a Weapon 3	4	2.3	2	1.4
265.03 CF	Possession of a Weapon 2	1	0.6		
265.35 AM	Prohibited Use of a Weapon	1	0.6		
270.00 BM	Unlaw. Dealing w. Fireworks	1	0.6	4	2.9
UNKNOWN	--	11	6.3		
TOTAL		175	100.4	139	98.2

<sup>1</sup>The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The day-fine sample is comprised of all 139 day-fines imposed in Penal Law cases from August 12, 1988 to November 11, 1988.

TABLE 4

CHARGE SEVERITY OF FINED CASES DURING PRE-TEST PERIOD AND DAY-FINE PERIOD<sup>1</sup>

	PRE-TEST PERIOD		DAY-FINE PERIOD	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
ARRAIGNED FOR ALL FELONIES:	41	25	34	25
ARRAIGNED FOR BF:	3	2	3	2
ARRAIGNED FOR CF:	3	2	4	3
ARRAIGNED FOR DF:	25	15	19	14
ARRAIGNED FOR EF:	10	6	8	6
ARRAIGNED FOR ALL MISDEMEANORS:	119	73	100	72
ARRAIGNED FOR AM:	117	71	91	66
ARRAIGNED FOR BM:	2	1	9	7
ARRAIGNED FOR VIOLATIONS:	4	2	5	4
UNKNOWN:	11			
TOTAL	<u>175</u>	<u>100</u>	<u>139</u>	<u>100</u>

<sup>1</sup>The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The day-fine sample is comprised of all 139 day-fines imposed in Penal Law cases from August 12, 1988 to November 11, 1988. Charge severity is measured by the severity levels provided in New York State Penal Law.

TABLE 5

CHARGE TYPE OF FINED CASES DURING PRE-TEST PERIOD AND DAY-FINE PERIOD<sup>1</sup>

	PRE-TEST PERIOD		DAY-FINE PERIOD	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
PROPERTY AND THEFT OFFENSES:	55	34	56	40
OFFENSES INVOLVING HARM TO PERSONS:	21	13	34	24
OFFENSES INVOLVING DRUGS AND CONTRABAND:	61	37	31	22
MISCONDUCT, OBSTRUCTION, AND SEX:	27	16	18	13
UNKNOWN:	11			
TOTAL	<u>175</u>	<u>100</u>	<u>139</u>	<u>99</u>

<sup>1</sup>The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP-1, and AP-2 calendars from November 21, 1987 to May 20, 1988. The day-fine sample is comprised of all 139 day-fines imposed in Penal Law cases from August 12, 1988 to November 11, 1988. Charge type is sorted according to categories created during the planning phase of the pilot project.

The greatest changes have occurred in the categories of drugs and contraband, and in harm to persons. During the pre-test period the proportion of drugs and contraband cases receiving a fine sentence was thirty-seven percent; during the first quarter of the experiment the proportion declined to twenty-two percent. For harm to persons, the proportion doubled: from thirteen percent in the pre-test period to twenty-five percent in the day-fine period.

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

#### TYPICAL OFFENDERS RECEIVING DAY-FINES

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

#### RICHARD SMITH

Richard Smith was prosecuted for threatening a police officer and resisting arrest. When stopped for a traffic violation, he told the officer that he knew where he and his family lived, and threatened to "get" him. When placed under arrest, he refused to be handcuffed. He was arraigned for resisting arrest (P.L. 205.30, an A misdemeanor); harassment (P.L.240.25, a violation); and disorderly conduct (P.L. 240.20, also a violation). He pleaded guilty to disorderly conduct.

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

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

## JOSEPH BURKE

Joseph Burke was prosecuted for stealing a car "valued at over \$100" according to court records. He was arraigned for grand larceny (P.L. 155.30, a class E felony); possession of stolen property (P.L. 165.45, a class E felony); and unauthorized use of an auto (P.L. 165.05, a class A misdemeanor). He pleaded guilty to attempted unauthorized use of an auto (a class B misdemeanor).

Mr. Burke is a 21-year-old black man who is single, and lives with his mother to whom he contributes support. He works at a restaurant, and reports take-home pay of \$180 per week.

Mr. Burke was sentenced to pay a ten unit day-fine, and his unit value was set at \$11.78. His fine totals \$115. He was given an installment schedule for payment, and has paid a total of \$100 in four payments over two months. His outstanding balance is \$15.

## LOUIS MARTINI

Louis Martini was prosecuted for falsely reporting the theft of a car in order to defraud his insurance company. He was arraigned on a charge of insurance fraud (P.L.176.20, a class D felony), and pleaded guilty to making a punishable false written statement (P.L. 210.45, a class A misdemeanor).

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

Mr. Martini was sentenced to pay a 40 unit day-fine. On the basis of his tax records (which showed an annual income in the mid-30s), the judge estimated his unit value at \$23.10 -- resulting in a total fine of \$924. Mr. Martini paid his day-fine in full on the day he was sentenced.

## ROBERT SILVER

Robert Silver was prosecuted for trying to prevent the arrest of his brother, and for possession of a pellet gun. He was arraigned for obstructing governmental administration (P.L. 195.05, a class A misdemeanor) and A.C. 10-131(2)(6) (an administrative code violation). He pleaded guilty to disorderly conduct (P.L. 240.20, a violation).

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

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

## CONCLUSION

Obviously, without the thorough examination of the total universe of cases handled by the Staten Island Criminal Court before and after the introduction of the day-fine system that will be provided by the full evaluation of the pilot, it is not possible to give a precise accounting of the effects of the introduction of this innovation in economic sanctioning. Using the limited data now available, any conclusions made regarding changes in the patterns of fine use will be -- at least in part -- speculative, until such time as findings from the comprehensive research effort now underway by staff of Vera's research Department become available. Nevertheless, project planners are encouraged by the results of the simple comparisons described above.

Even though it cannot yet be determined what portion of the fifty-eight percent increase in the number of fine sentences imposed after the introduction of day-fine system may be attributed to the introduction of day-fines (as distinguished from the "Hawthorne effect," for example) the trend toward increased fine use suggests, nonetheless, that despite the introduction of new procedures requiring calculation of fine amounts using heretofore unfamiliar methods, the day-fine is an attractive sentencing option with advantages over the fixed-sum fine. That eighty-six percent of all fines imposed during the early weeks of the pilot were set using the new procedures further attests to the workability of the system designed by the project's planning workgroup.

The fifty-percent increase in total dollar amounts ordered by the court, coupled with the rise in the average fine amounts since introduction of the day-fine system demonstrates that the new system has a revenue-enhancing affect. Indeed, the 153 percent rise in total dollars ordered which would have occurred but for the current low statutory fine maxima, gives strong evidence that if the legislature were to establish fine maxima sufficiently high to allow day-fines to float freely to the proper dollar amount as determined according to each individual offender's means, revenues derived from fines would rise sharply.

The greater dispersion of fine amounts within the currently permitted ranges offers significant evidence that judges have made use of the new procedures as the planning workgroup intended -- to differentiate more fairly between offenders of differing economic circumstances.

The stable rates of distribution of fine sentences across Penal Law severity classes demonstrates that judges have not been timid about using the day-fine in the full range of criminal cases where they would have previously imposed a fixed-sum fine. This finding gives planners reason to speculate that, as confidence builds in the new system, the court may begin to experiment with even broader application of the day-fine -- including its extension (as in European practice) as a significant alternative to a jail sentence for appropriate offenders.