

Vera Institute of Justice

THE STATEN ISLAND DAY FINE EXPERIMENT

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The Staten Island Economic Sanctions  
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## I. INTRODUCTION

In August 1988, judges in Criminal Court of Richmond County, which comprises the New York City borough of Staten Island, began the first systematic use of day fines in American courts. Initially developed in Scandinavia in the 1920s and 30s, and then introduced to West Germany in the late 1960s and early 1970s as a substitute for short terms of incarceration, the day-fine involves a simple two-step process in setting fine amounts that embraces the principles of proportionality and equity that are traditional in both European and American sentencing jurisprudence.

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

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

### **The Beginnings of the Staten Island Day Fine Experiment**

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

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1 Day-fine systems are in place in eight European countries (Finland, Sweden, Denmark, West Germany, Austria, France, Portugal, and Greece), and are also found in Cuba, Costa Rica, and Bolivia. Efforts to establish the practice are progressing in Spain and Switzerland. In Great Britain a unit-fine system (similar to the Continental day fine but based on the offenders weekly net income rather than the daily amount) has been piloted successfully in four Magistrates Courts, and is now being proposed for nation-wide use.

2 Support for the planning effort was provided by the National Institute of Justice and the German Marshall Fund of the United States.

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

### **The Impetus Behind the Reform:**

#### **Problems in the Current American Use of Fines as a Criminal Sanction**

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

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

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

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

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

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

This more restricted usage of the fine in this country is not due to a dear policy preference for such practice. Evidence compiled by researchers who have studied the use of this sanction in the American court system indicates that although the restricted use of fines for only minor or petty offenses is the typical pattern, many courts are already using

finer for a broad range of non-trivial offenses. Legislative initiatives at both the state and federal levels to raise statutory fine maxima are succeeding, thus inviting still broader application of the fine to some types of crimes that now commonly draw jail terms and to offenders who may now be receiving fines that are less punitive than might be appropriate because existing "tariff" systems make it hard to increase their fine amount.

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

### **The Promise of the Day Fine Technique**

The day fine offers a means of rescuing the criminal fine from its relatively limited use. By separating the assessment of the gravity of the offense from the offender's ability to pay, and by developing systematic and easy-to-administer techniques for linking them, the day fine permits both a more equitable use of the fine and a more widespread use as well, across a broader range of criminal offenses and offenders.

So freed from the bounds of current practice, the fine may be permitted to play a much more important role in criminal sanctioning. Fines have certain inherent advantages. While admittedly less severe than incarceration, the criminal fine has an unmistakably punitive impact on the offender. Moreover, its message is unambiguously punitive. This fits comfortably with penalty systems that stress offender accountability. When fined, the offender quite literally is made to pay his or her debt to society. When the fine can be flexibly adjusted to fit both the gravity of the offense and the offender's means (as day fines permit), it does not destroy the offender's ties to family and community. It can also be an important source of revenue and does not require the resources of additional administrative agencies for implementation.

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3 Hillsman, Sichel and Mahoney, *Fines in Sentencing: A Study of the Use of the Fine of the Criminal Sanction* (Washington, D.C.: National Institute of Justice, 1984); Cole, Mahoney, Thornton and Hanson, *The Practices and Attitudes of Trial Court Judges Regarding Fines as a Criminal Sanction* (Washington, D.C.: National Institute of Justice, 1987); Casale and Hillsman, *The Enforcement of Fine as Criminal Sanctions: The English and its Relevance to American Practice* (Washington, D.C.: National Institute of Justice, 1986).

4. Sally Hillsman. 1990. "Fines and Day Fines," Criminal Justice: A Review of Research edited by Michael Tonry and Norval Morris. Vol. 12 (Chicago: University of Chicago Press).

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

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

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

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

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5. Albrecht and Johnson. 1980. "Fines and Justice Administration: the Experience of the Federal Republic of Germany." *International Journal of Comparative and Applied Criminal Justice* 4:3-14.

6. Glaser and Gordon. 1988. *Use and Effectiveness of Fines, Jail, and Probation*. Los Angeles: University of Southern California, Social Science Research Institute.

To ease this shift, the 1969 legislative reform provided for a conversion of what was then a fixed-sum fining system to a model based on the Scandinavian day-fine technique. The German version, although arguably less elegant and precise than the better-known Swedish system, has proven its usefulness in holding default to acceptably low levels-and fines have continued to comprise more than eighty percent of all sentences meted out by the courts each year, while the use of short-term imprisonment and overall incarceration rates have continued to decline. In 1984 only 10,155 terms of under six months duration were meted out by the German courts.

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

## II. DESIGNING AND IMPLEMENTING A DAY-FINE SYSTEM FOR THE STATEN ISLAND COURT

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

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

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

The day fines project chose to limit its focus to the trial court of limited jurisdiction in Staten Island. This was done to assure that the results of this innovation would be broadly useful to American court systems in which lower courts have traditionally been the primary users of fines. Moreover, as a court of original jurisdiction, the Staten Island Criminal Court arraigns and processes all felony cases before indictment. Because case screening is vigorous at the lower level, many of these felony cases are retained by the court for dispositions as misdemeanors. A 1986 sample of Criminal Court cases analyzed for the planning effort revealed that almost three-quarters of all cases charged by prosecutors as felonies remained in the lower court for final disposition. Thus the planners of the day-fine adaptation were confident that this court's cases would provide a broad range, both in type and severity of offense.

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7. *Statistical Report: Complaints and Arrests*. 1986. (New York, N.Y.: New York City Police Department Office of Management and Planning); *New York State County Criminal Justice Profiles: 1984-1985*. (Albany, N.Y.: New York State Division of Criminal Justice Services, Bureau of Statistical Services).

## **The Project's Goals**

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

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

(1) a system of sentencing benchmarks (numerical guidelines) that proposed a specific number of day-fine units for each criminal offense within the full range of conviction charges common to cases disposed in this court;

(2) a system for collecting the necessary information for all offenders on their ability to pay;

(3) policy guidelines and easy-to-use methods for establishing the value of each day-fine unit imposed on a particular offender;

(4) strategic improvements in the court's collection and enforcement system, and

(5) a microcomputer-based information system that automates and records collection and enforcement activities.

## **A Structural Framework for the American Day Fine**

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

The structure of the West German system now in use reflects its genesis as part of a broader policy-driven shift away from short-term imprisonment. The basic organization is a very broad range of day fine units, from five to 360, roughly but logically linked to a term of imprisonment for which the day fine is seen as a substitute. The number of units imposed in a given case is assessed according to the gravity of the offense. (It is this figure--rather than the total monetary value of the fine--which is often set in relation to localized informal tariffs). The West German day-fine statute recommends that the value of the day fine unit be based on the average net income the defendant has (or could have--when an offender is unemployed, the West German judge may assess the day fine on potential earnings), with a minimum set at 2DM to a maximum of 10,000DM (about \$1.20 to \$6,000).

In setting the unit value at the net daily income, West German judges have tended to preserve a day's-wages-for-a-jail-day exchange economy that stems from the original purpose of the reform (a "ransom" for jail time). This exchange is further underscored by the statutory rule that, in cases of default, one day-fine unit must correspond to one day of imprisonment for non-payment.

In contrast, the Swedish day fine technique, developed in the early 1920s to provide a remedy to the inherent inequity of the fixed-sum fine system, is constructed on

the basis of a narrower range of one to 120 units (180 for multiple offenses), with a method of assessing its value, within a narrow range of 10 to 1000 Kr (about \$1.70 to \$170), based on a rough accounting of the offender's annual discretionary income—that is, the amount that the offender could afford to give up when practicing “strict economy” in his or her spending habits. This figure is then divided by 1000 (reducing the amount to approximately one-third of the offender's daily discretionary income) and then variously adjusted for taxes, capital wealth, and significant debts. The concept embodied here—“economic jail”—is essentially one of relative economic deprivation for the duration of time warranted by the gravity of the offense. The provisions for conversion of the day fine to jail time, in the event of default, set forth a sliding scale which begins at ten days imprisonment for five day fine units but runs to only 90 days imprisonment for 180 day fines.

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

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

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8. Hans Thornstedt, “The Day-fine System in Sweden.” Information Bulletin of the National Swedish Council for Crime Prevention: Bulletin No.3, 1986.

9. Casale, Silvia S.G. 1981. “Fines in Europe: A Study of the Use of Fines in Selected European Countries with Empirical Research in the Problems of Fine Enforcement. Working Paper no. 10, *Fines in Sentencing*. New York: Vera Institute of Justice.

### **Assigning Units to Crimes**

Because conversion from traditional fixed-sum fines to day fines would entail replacing the old “going-rate” tariff system in Staten Island's courts, with a new set of reference points (a unit-rate system) for sentencing decision makers, a system of “benchmark scales” was devised for use in determining the number of day fine units that would be appropriate for the charges facing an individual defendant.

Because the Criminal Court has limited jurisdiction for adjudication of cases below the felony level, the planning group thought it appropriate to structure the range of day fine units to allow for later use at the felony level. Supposing that a range of from 1 to 360 day fine units would offer sufficient flexibility for the full range of conviction charges eligible for a fine sentence under the New York State Penal Code (from

violations through felonies), the group decided that the range for misdemeanors should be capped at 120 day fine units.

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

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

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10. In Sweden, such guidance is provided by circulars promulgated by the regional Public Prosecutor’s Offices for use by prosecutors in setting fine units for routine cases which can be resolved by prosecutor’s penal orders. The practice of the courts is generally to follow these bench-marks in cases which come for sentencing.

The Swedish circulars are organized according to the type of crime involved (offenses against life and health, offenses against liberty and peace, theft and larceny, narcotic drug act crimes, vehicle offenses, etc.) and within categories, crimes are rated according to seriousness and assigned a prescribed value (or range) in day fines. No allowance is made for the offender’s prior record. For some crimes-petty larceny, for example-the same day fine unit value may be given again and again; the number of day fines is determined solely by the value of the stolen property. For other types of crimes drunk driving is one-repeat offenders are unlikely to receive a series of day fines, and will soon move up the sentencing ladder to a suspended custodial sentence.

11. The analytic process was conducted according to some general principles suggested by Andrew von Hirsch in his book on the jurisprudence of sentencing, *Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals* (New Brunswick, N.J.: Rutgers University Press, 1985).

The benchmark scales were devised and adopted by the planning group to provide judges with a common reference point when choosing the number of penalty units to be imposed in a given case. Adherence to them is entirely voluntary as is the use of the day-fine technique altogether. These simple sentencing standards were not conceived to be applied as, nor are they perceived as being, “sentencing guidelines” in the formal sense. Moreover, they do not govern or even guide the judge’s choice of sanction in a given case. Once the choice has been to fine, however, the scales provide a workable structure that coupled with the valuation procedures detailed below-replaces the informal dollar-amount tariffs of past practice with a fair and consistent framework for assessing proportional and equitable fine amounts. (See Illustrations I and II, pp. 11 and 12, for examples of the structural design features discussed above.)

### **Matching Day-fine Units to the Offender’s Ability to Pay**

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

### **Balancing Privacy Rights vs. The Court’s Need to Know:**

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

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

judicious restraint, or tempered by the defendant’s cooperation when faced with a “generous” best guess by the judge.

Illustration II  
DAY-FINE BENCHMARKS  
(Partial)

	Discount Number	Benchmark Number	Premium Number
<u>OFFENSES INVOLVING HARM TO PERSONS:</u>			
<u>120.00 AM ASSAULT 3</u>			
A. <u>SUBSTANTIAL INJURY</u> Stranger to stranger; or, where victim is know to assailant, he/she is weaker, vulnerable	81	<u>95</u>	109
B. <u>MINOR INJURY</u> Stranger to stranger; or, where victim is known to assailant, he/she is weaker, vulnerable; or altercations involving use of weapon.	59	<u>70</u>	81
C. <u>SUBSTANTIAL INJURY</u> Altercations among acquaintances; brawls.	38	<u>45</u>	52
D. <u>MINOR INJURY</u> Altercations among acquaintances; brawls.	17	<u>20</u>	23
<u>PROPERTY AND THEFT OFFENSES:</u>			
<u>155.25 AM PETIT LARCENY</u>			
Range of 5-60 Day-Fine Units			
\$1000 or more	51	<u>60</u>	69
\$700-999	42	<u>50</u>	58
\$500-699	34	<u>40</u>	46
\$300-499	25	<u>30</u>	35
\$150-299	17	<u>20</u>	23

\$50-149	8	<u>10</u>	5
\$1-49	4	<u>5</u>	6

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

Under current American law the Internal Revenue Service is not permitted to disclose income tax information to the court for the purpose of sentencing. In addition, Federal and state privacy laws generally prohibit financial institutions from disclosing information without consent.

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

**The means interview:**

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

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12.26 U.S.C. 6103(i).

13. "New York C.P.L. section 390.30.

14. *U.S. v. Couch*, 409 U.S. 322, 328-29 (1973).

15. *Fisher v. U.S.*, 423 U.S. 391 (1976).

16. *U.S. v. Doe*, 463 U.S. 605(1984).

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

Much of the basic income information needed by the Staten Island court to convert to the day-fine system was consequently already available to the court at sentencing. What was needed was to extend the interview process to include defendants who had not been taken into police custody at arrest, but rather, were reporting for arraignment under New York City's Desk Appearance Ticket system (citation release).

**Policies regarding indigency and wealth:**

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

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

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

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17. Hillsman, Sally T., Joyce L. Sichel and Barry Mahoney. 1984. *Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction*. Washington, D.C.: National Institute of Justice.

Offenders whose financial circumstances or capital assets place them at the other end of the economic scale pose other problems for policy. Even though, in theory, procedures can be developed to take account of the economic resources of offenders at the high end of the scale, it still bears repeating that the scaling of the day fine to means cannot, in itself, assure that the impact of the fine will be uniform for all. While application of the day-fine technique will probably produce rough equity among most offenders-and provide a great measure of remedy for the inequities inherent in the fixed-sum fine system-those who can easily pay a sizable fine from savings or liquid capital will certainly still feel a milder sting than those whose more modest means will require a regimen of stringent economy to pay off their fine.

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

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

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

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

A second adjustment -- a flat-rate, across-the-board discount factor of one-third off -- was next built into the valuation table to help assure that the resulting fine amounts would represent the punitive bite that the planning group deemed appropriate. In dry-run

applications of the day-fine technique to actual Staten Island cases, the planning group felt that the resulting day-fine amounts would have been too harsh in comparison to the informal tariff fine amounts that were prevailing in “normal” cases before the reform.) To provide an extra measure of shelter from the harsh impact of stiff fines for those offenders living in poverty, planners chose to increase the discount to 50 percent for those offenders whose incomes fall below U.S. Department of Health and Human Services poverty income guidelines? (See Illustration III for an example of the valuation table.)

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

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

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

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18. The Federal guidelines represent a fairly generous standard in the sense that the poverty-level indicators are set far above the levels of family income which are derived by application of the basic grant formula used to determine welfare payments in New York City).

### Illustration 3

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

#### Number of Dependents (Including Self)

Net Daily Income(\$)	1	2	3	4	5	6	7	8
3	1.28	1.05	.83	.68	.53	.45	.37	.30
4	1.70	1.40	1.10	.91	.70	.60	.50	.40
5	2.13	1.75	1.38	1.1	.88	.75	.62	.50
6	2.55	2.10	1.65	1.35	1.05	.90	.75	.60
7	2.98	2.45	1.93	1.58	1.23	1.05	.87	.70
8	3.40	2.80	2.20	1.80	1	1.20	1.00	.80
9	3.83	3.15	2.48	2.03	1.58	1.35	1.12	.90
10	4.25	3.50	2.75	2.25	1.75	1.30	1.25	1.00
11	4.68	3.85	3.03	2.47	1.93	1.65	1.37	1.10
12	5.10	4.20	3.30	2.70	2.10	1.80	1.50	1.20
13	5.53	4.55	3.58	2.93	2.28	1.95	1.62	1.30
14	7.85	4.90	3.85	3.15	2.45	2.10	1.75	1.40
15	8.42	5.25	4.13	3.38	2.63	2.25	1.87	1.50
16	8.98	5.60	4.40	3.60	2.80	2.40	2.00	1.60
17	9.54	5.95	4.68	3.83	2.98	2.55	2.12	1.70
18	10.10	6.30	4.95	4.05	3.15	2.70	2.25	1.80
19	10.66	8.78	5.23	4.28	3.33	2.85	2.37	1.90
20	11.22	9.24	5.50	4.50	3.50	3.00	2.50	2.00
46	25.81	21.25	16.70	13.66	10.63	9.11	7.59	4.60
47	26.37	21.71	17.06	13.96	10.86	9.31	7.75	4.70
48	26.93	22.18	17.42	14.26	11.09	9.50	7.92	6.34
49	27.49	22.64	17.79	14.55	11.32	9.70	8.08	6.47
50	28.05	23.10	18.15	14.85	11.55	9.90	8.25	6.60
51	28.61	23.56	18.51	15.15	11.78	10.10	8.41	6.73

52	29.17	24.02	18.88	15.44	12.01	10.30	8.58	6.86
53	29.73	24.49	19.24	15.74	12.24	10.49	8.74	7.00
54	30.29	24.95	19.60	16.04	12.47	10.69	8.91	7.13
55	30.86	25.41	19.97	16.34	12.71	10.89	9.07	7.26
96	53.86	44.35	34.85	28.51	22.18	19.01	15.84	12.67
97	54.42	44.81	35.21	28.81	22.41	19.21	16.00	12.80
98	54.98	45.28	35.57	29.11	22.64	19.40	16.17	12.94
99	55.54	45.74	35.94	29.40	22.87	19.60	16.33	13.07
100	56.10	46.20	36.30	29.70	23.10	19.80	16.50	13.20

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

### **Valuing "underground" and criminal income:**

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

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

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

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

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

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

#### **Offenders’ dependents and dependent offenders:**

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

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

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

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

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

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

### **Collection and Enforcement**

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

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

In planning the day-fine experiment, the planning group was determined to assure that the introduction of new techniques for imposing fines would not diminish the court’s good record in collecting revenues. And, given the opportunity to provide additional staff to the project, planners decided to test a variety of alternatives, including more rapid follow-up with notification and warnings (without using bench warrants), more

individualized contact with offenders to examine the circumstances surrounding non-payment, and make provisions aimed at encouraging compliance.

**Establishing appropriate time-frames for payment:**

Earlier research had shown that in the New York City courts, most offenders were not able to pay their fines at sentencing. City-wide the proportion who paid on a sampled day was 19 percent; in Staten Island the proportion was 14 percent. Because use of a day-fine technique was thought likely to lead to an increase in the amount of many fines (which, indeed, turned out to be true), the planning group assumed that this pattern was not likely to change. The need for installment or deferred payment plans was consequently evident. The existing practice amounted to an *ad hoc* installment system in the bulk of cases, but project planners were aware that greater efficiency could be obtained if measures were taken to maximize the likelihood of full payment in the shortest possible period.

19. Zamist, Ida. 1986. *Fines in Sentencing: An Empirical Study of First Use, Collection and Enforcement in New York City Courts*. (Revised.) New York: Vera Inst of Justice.

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

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

Installment plans were geared toward short time-frames (no more than three months in most cases) with payment dates set in relation to an individual’s income patterns (e.g., the first work-day after pay day). However, when dealing with a low-income offender (defined as living below the U.S. Department of Health and Human Services poverty income guidelines), a special installment plan for payment was devised by applying the same method used by public assistance agencies when recouping welfare

over-payments from their clients. In New York City, the standard rate for withholding in cases of over payment is 10 percent of the basic grant; the same percentage is used to compute the amount of the monthly fine payment for offenders living below the poverty line.

### **Enforcement measures:**

When an offender strays out of compliance with the payment terms set in the installment contract the day-fines officer has recourse to a variety of measures. Warning letters—a sensible but rarely-used measure—have been found to be effective with a significant share of offenders by the few American and English courts that do use them, and were consequently adopted by the project. The PC-based tracking system is programmed to automate the production of both reminders and warning letters.

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

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

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

### **Typical Offenders Receiving Day Fines: Some Illustrations**

The following case summaries represent typical examples of the offenders who have received a day-fine sentence during the first year of pilot operations. The names of these offenders have been changed, but all other information 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 (an A misdemeanor); harassment (a violation); and disorderly conduct (also a violation). He pleaded guilty to disorderly conduct.*

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

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

#### JOSEPH BURKE

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

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

#### LOUIS MARTINI

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

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

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

#### ROBERT SILVER

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

*Mr. Silver is 23 years old. He lives with his brother. When he was arrested, he was working as a stock clerk in a store, but at sentencing he said he was unemployed, and*

*living on savings. The judge assumed he could easily find another job, and estimated his potential income at about \$6.00 per hour.*

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

### **III. IMPACT OF THE REFORM ON SENTENCING PRACTICE AND REVENUES DERIVED FROM FINES**

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

(1) Will these new procedures create an incentive (or a disincentive) for selecting the fine as a sentencing option?

(2) What impact do day fines have on fine revenues?

(3) Will judges use the day-fine method to differentiate between fined offenders on the basis of their means, rather than “fudging” by manipulating the new procedures to replicate existing informal tariffs-i.e., retaining the established “going rates” for specific offenses?

(4) Will the day fine method would cause shifts in who gets fined, measured by the severity of the offense and the type of charge?

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

During the first year of pilot operations, 276 day fines were imposed as sentences for Penal Law offenses disposed in the court. These day fines represented 73 percent of all Penal Law fine sentences imposed. The high proportion of day fines indicates that the basic features of the day-fine system are workable. It suggests further that, as the day-fine system is refined and court officials become more familiar with its operation, the day fine can completely replace fixed-sum fines in Penal Law cases.

## **Comparisons with Prior Sentencing Patterns**

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

### **Volume of Fine Usage**

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

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20. “Day Fine” cases were identified by a review of court docket papers that classified a fine sentence as a day fine only when the papers contained clear markings by the sentencing judge which specified the number of units and the unit value the judge had used to compute the fine amount. Many sentences classified as “fixed-sum” fines may have in fact have been day fines—but because the court papers lacked the required markings (or the papers themselves could not be found), this could not be documented. Conversations with court officials regarding the cases that resulted in fixed-sum fines indicate that some of these cases resulted in plea bargains where an assistant district attorney negotiated a specific fixed-sum fine amount. Many of the fixed-sum fines were imposed by Brooklyn judges who were assigned to the Staten Island bench for short intervals (the Brooklyn and Staten Island courts are jointly administered) and who were unfamiliar with the new system. Some resulted because 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 units and have been added to a revised version of the scales. A few 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 Vehicle and Traffic Law cases (most of which carry a rigidly constricted schedule of statutorily-mandated fine amounts), fixed-sum fines were given.

21. The Vera Institute’s Research Department is conducting a comprehensive 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. Results from this effort, however, are not yet available.

As can be seen in Table 1, the total dollar amounts ordered by the court have risen somewhat since the introduction of the day-fine system. The total amount ordered averaged \$19,705 per quarter during the pre-test period, or an annualized estimated amount of \$78,818. The total dollar amount ordered during the first year of the pilot period was \$93,078 an increase of eighteen percent. However, because of the relatively low statutory maxima (combined with plea-negotiation practices that cause the bulk of fine sentences to be imposed for conviction charges at the violation level), about one-quarter of the fines were “capped” below the dollar amounts that resulted from the judges’ day-fine computations (see footnote 3 to Table 1). For this reason, average fine amounts have risen by only eight percent (\$246 compared to \$226) since introduction of the day-fine system.

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

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

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

As can be seen in Table 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 \$372, sixty-five percent higher than the \$226 mean for the pre-test period. Furthermore, this increase in average fine amounts when coupled with the modest increase in the use of fines would have caused total court-ordered fine dollars to increase by 79 percent (from a pre-test average of \$19,705 per quarter to \$35,281 per quarter during the pilot year).

**TABLE 1**

**COMPARISON OF FINE AMOUNTS IN PRE-TEST AND IN DAY-FINE PERIODS**

	N	TOTAL DOLLARS IMPOSED	MINIMUM FINE IMPOSED	MAXIMUM FINE IMPOSED	MEAN AVERAGE FINE IMPOSED	MEDIAN FINE IMPOSED
Pre-Test Data-Sample (Two Quarters):	175	\$39,409	\$25	#1000	\$226	\$150
Test-Year Fines; Actual Amounts Imposed:	379	93,078	20	1000	246	240
Test Year Fines; "Un-Capped" Amounts.	379	140,825	20	3415	372	235

1. 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 May20, 1988. The test year fine sample is comprised of all 379 fines imposed in Penal Law cases during the pilot year, from August12, 1988 to August11, 1989. All amounts in this and other tables are rounded off to the nearest dollar.

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

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

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

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

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

In cases in which a conviction for a violation occurs to “give a break” to a deserving offender, a judge may wish nonetheless to impose a fine penalty in an amount that reflects the seriousness of the provable criminal conduct. In other cases, the judge would impose the more nominal sum that is warranted when all the evidence sustains only the violation charge (such as disorderly conduct). When the former circumstances 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 90 of the 276 day-fine cases, and accounted for 65 of the 93 capped fines.

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

Table 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; 22 percent at \$100; and so on. As expected, however, introduction of the day-fine method diminished this clustering effect. Despite the judges’ common practice of rounding off the day-fine amounts (e.g., a day fine of \$48 becomes \$50), only eight percent were set at \$50; four percent at \$75; and 11 percent at \$100. Under the day-fine system there were fine amounts set at 52 specific dollar values within the permitted range (compared with 17 during the pre-test period).

TABLE 2

**COMPARISON OF FINE AMOUNTS IN PRE-TEST AND IN DAY-FINE PERIODS**

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ACTUAL DOLLAR	PRE-TEST	TEST YEAR
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AMOUNTS IMPOSED	DATA SAMPLE		FINES	
	N	%	N	%
\$20			1	2.3
25	4	2.3	5	1.3
30			2	0.5
35			1	0.3
45			2	0.5
50	24	13.7	29	7.7
52			1	0.3
59	1	0.6		
60			2	0.5
65			1	0.3
70			1	0.3
73			1	0.3
75	13	7.4	16	4.2
80			5	1.3
85			3	0.8
87			1	0.3
90			1	0.3
100	38	21.7	42	11.1
110			4	1.1
115			1	0.3
120			5	1.3
125	1	0.6	4	1.1
130			1	0.3
138			1	0.3
140			5	1.3
150	10	5.7	18	4.7
160			1	0.3
170			4	1.1
175	1	0.6	1	0.3

180			6	1.6
190			1	0.3
200	14	8.0	16	4.2
215			1	0.3
220			1	0.3
225	3	1.7	2	0.5
230			1	0.3
232			1	0.3
235			1	0.3
240			4	1.1
250	40	22.9	125	33.0
300			4	1.1
320			1	0.3
350	2	1.1	1	0.3
387			1	0.3
400			2	0.5
425			1	0.3
450	1	0.6	2	0.5
500	9	5.1	24	6.3
650			1	0.3
750	2	1.1	3	0.8
924			1	0.3
950	3	1.7	2	0.5
1000	8	4.6	18	4.7
UNK	1	0.6		

**TOTAL** 175 100.0 379 100.8

1. 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 test year fine sample is comprised of all 379 fines imposed in Penal Law cases from August 12, 1988 to August 11, 1989.

2. The expected dispersion of fine amounts after introduction of the day-fine system has produced an array of dollar amounts with much less clustering at the previously dominant dollar figures. A few "peaks" still appear along the continuum of day-fine amounts,

however, (such as those at \$100 and \$250). As discussed in the text, the \$250 cluster is caused by the capping of fines in violation cases due to the current statutory maximum. Reasons for clusters such as the one at \$100 are less clear; some of these day-fines were produced when judges rounded off dollar amounts which fell close to the \$100 mark.

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Absent the statutory caps, this dispersion effect of the day-fine system would have been even more pronounced because the bulk of the 125 fines set at \$250 would have been spread across a wider and higher range, as determined by the day-fine method.

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

### **Types of Offenses Sanctioned with Fines**

It can be seen that the introduction of the day fine has not had much effect on fine use patterns in terms of the charge severity of offenses drawing a fine sentence. This is revealed in a comparison between the pre-test period and the first quarter of the pilot in regard to the range of offense severity and the range of offense types drawing a fine sentence. Table 3 shows the distribution of penal law offenses that appear as arraignment charges in cases that received fine sentences before and after the introduction of the day-fine system. In Table 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.)

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

In contrast, an examination of arraignment offenses by charge type (in contrast to severity) does show more shifts in the categories of offenses drawing a fine sentence since the introduction of the day-fine system. Table 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.

The greatest changes have occurred in the category involving drugs and contraband. During the pre-test period the proportion of drugs and contraband cases receiving a fine sentence was 37 percent; during the first year of the experiment the

proportion decreased to 27 percent. For property and theft offenses as well as offenses involving harm to persons, the proportions rose somewhat.

**TABLE 3**  
COMPARISON OF ARRAIGNMENT CHARGES BETWEEN PRE-TEST AND DAY-FINE PERIODS

		NUMBER IMPOSED IN PRE-TEST PERIOD		NUMBER IMPOSED IN DAY-FINE PERIOD	
PENAL LAW CHARGE	DESCRIPTION	N	%	N	%
120.00 AM	Assault 3	8	4.6	22	5.8
120.05 DF	Assault 2	10	5.7	22	5.8
120.15 BM	Menacing			4	1.1
120.20 AM	Reckless Endangerment 2	1	0.6	8	2.1
120.25 DF	Reckless Endangerment 1			6	1.6
130.60 AM	Sexual Abuse 2			3	0.8
140.05 VIO	Trespass			1	0.3
140.10 BM	Criminal Trespass 3	1	0.6	6	1.6
140.15 AM	Criminal Trespass 2			3	0.8
140.20 DF	Burglary 3	1	0.6	4	1.1
110/140.20 EF	Attempted Burglary 3			1	0.3
140.25 CF	Burglary 2	1	0.6	5	1.3
140.30 BF	Burglary 1			1	0.3
140.35 AM	Poss. of Burglary Tools			2	0.5
145.00 AM	Criminal Mischief 4	3	1.7	2	0.5
145.05 EF	Criminal Mischief 3			2	0.5
145.10 DF	Criminal Mischief 2			1	0.3
150.05 EF	Arson 4			1	0.3

150	Arson3			2	0.5
110/155.30 AM	Attempted Grand Larceny			3	0.8
155.25 AM	Petit Larceny	20	11.4	49	12.9
155.30 EF	Grand Larceny 3	5	2.9	7	1.8
155.35 DF	Grand Larceny 2			3	0.8
160.05 DF	Robbery 3	1	0.6		
110/160.10 DF	Attempted Robbery 2			1	0.3
160.10 CF	Robbery 2	1	0.6	3	0.8
165.00 AM	Misapplication of Property	1	0.6		
165.05 AM	Unauth. Use of a Vehicle	3	1.7	3	0.8
165.09 AM	Auto Stripping 2			1	0.3
165.15 AM	Theft of Services			1	0.3
165.40 AM	Poss. of Stolen Property 5	7	4.0	19	5.0
165.45 EF	Poss. of Stolen Property 4	2	1.1	5	1.3
165.50 DF	Poss. of Stolen Property 3	2	1.1	9	2.4
170.10 DF	Forgery 2	1	0.6	3	0.8
170.20 AM	Poss. of Forged Insts. 3	1	0.6	5	1.3
170.25 DF	Poss. of Forged Insts. 2	1	0.6	2	0.5
170.55 BM	Unlaw. Use of Slugs 2			1	0.3
175.30 AM	Offering a False Inst.	1	0.6		
176.20 DF	Insurance Fraud 3	2	1.1	12	3.2
190.05 BM	Issuing a Bad Check			1	0.3
190.25 AM	Criminal Impersonation 2	3	1.7	6	1.6
195.05 AM	Obstructing Govt. Admin. 2	2	1.1	5	1.3
200.00 DF	Bribery 2			1	0.3
200.25 EF	Receiving Reward 2	1	0.6		
205.30 AM	Resisting Arrest	12	6.9	21	5.5
210.45 AM	Making Pun. False Statement			1	0.3
215.50 AM	Criminal Contempt 2	1	0.6	1	0.3
220.03 AM	Poss. of Cont. Substance 7	26	14.9	45	11.9
220.06 DF	Poss. of Cont. Substance 5	1	0.6	2	0.5
220.09 CF	Poss. of Cont. Substance 4			3	0.8
220.16 BF	Poss. of Cont. Substance 3			4	1.1

220.39 BF	Sale of Cont. Substance 3	3	1.7	5	1.3
220.45 AM	Poss. of a Hypo. Instr.			4	1.1
220.50 AM	Poss. of Cont. Substance 6			1	0.3
221.05 VIO	Poss. of Marijuana	1	0.6	2	0.5
221.10 BM	Poss. of Marijuana 5			2	1.1
221.15 AM	Poss. of Marijuana 4			1	0.3
221.25 DF	Poss. of Marijuana 2 2	1.1			
221.40 AM	Sale of Marijuana 4	11	6.3	8	2.1
225.10 EF	Promoting Gambling 2	2	1.1	4	1.1
225.30 AM	Poss. of a Gambling Device	4	2.3	1	0.3
230.00 BM	Prostitution			1	0.3
240.15 EF	Criminal Anarchy			1	0.3
240.20 VIO	Disorderly Conduct	3	1.7	2	0.5
240.25 VIO	Harassment			1	0.3
240.30 AM	Aggravated Harassment 2			1	0.6
240.36 BM	Loitering 1			1	0.3
240.37 AM	Loitering for Prostitution	1	0.6	1	0.3
240.50 BM	False Rept. Incident 3			1	0.3
245.00 BM	Public Lewdness			4	1.1
250.05 EF	Eavesdropping			1	0.3
265.01 AM	Possession of a Weapon 4	8	4.6	17	4.5
265.02 DF	Possession of a Weapon 3	4	2.3	5	1.3
265.03 CF	Possession of a Weapon 2	1	0.6		
265 AM	Prohibited Use of a Weapon	1	0.6		
270.00 BM	Unlaw. Dealing w. Fireworks	1	0.6	5	1.3
UNKNOWN		11	6.3		
<b>TOTAL</b>		<b>175</b>	<b>100.4</b>	<b>379</b>	<b>100.8</b>

1. The pre-test sample is comprised of all 175 Penal Law fines recorded on the Staten Island Criminal Court Arraignment, AP and AP-2 calendars from November 21, 1987 to May 20, 1988. The test year fine sample is comprised of all 379 fines imposed in Penal Law cases from August'12, 1988 to August11, 1989.

**TABLE 4**  
**CHARGE SEVERITY OF FINED CASES DURING PRE-TEST PERIOD AND**  
**DAY-FINE PERIOD**

	PRE-TEST PERIOD		TEST-YEAR PERIOD	
	N	%	N	%
ARRAIGNED FOR				
ALL FELONIES:	41	25	116	31
ARRAIGNEDFORBF:	3	2	10	3
ARRAIGNED FOR CF:	3	2	13	3
ARRAIGNED FOR DF:	25	15	71	19
ARRAIGNED FOR EF:	10	6	22	6
ARRAIGNED FOR				
ALL MISDEMEANORS:	119	73	258	68
ARRAIGNEDFORAM:	117	71	234	62
ARRAIGNED FOR BM:	2	1	24	6
ARRAIGNED FOR				
VIOLATIONS:	4	2	5	1
UNKNOWN:	11			
<b>TOTAL</b>	<b>175</b>	<b>100</b>	<b>379</b>	<b>100</b>

1. 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 test-year fine sample is comprised of all 379 fines imposed in Penal Law cases from August 12, 1988 to August 11, 1989. Charge severity is measured by the severity levels provided in New York State Penal Law.

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

**TABLE 5**  
**CHARGE TYPE OF FINED CASES DURING PRE-TEST PERIOD AND**

DAY-FINE PERIOD

	PRE-TEST PERIOD		TEST-YEAR PERIOD	
	N	%	N	%
PROPERTY AND THEFT OFFENSES:	55	34	159	42
OFFENSES INVOLVING HARM TO PERSONS:	21	13	72	19
OFFENSES INVOLVING DRUGS AND CONTRABAND:	61	37	102	27
MISCONDUCT, OBSTRUCTION, AND SEX:	27	16	46	12
UNKNOWN:	11			
<b>TOTAL</b>	<b>175</b>	<b>100</b>	<b>379</b>	<b>100</b>

1. 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 test-year fine sample is comprised of all 379 day-fines imposed in Penal Law cases from August 12, 1988 to August 11, 1989. Charge type is sorted according to categories created during the planning phase of the pilot project.

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

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

**Assessing the Efficacy of Collection Procedures**

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

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

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

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When the Institute's Research Department completes the full evaluation of the pilot test, the experimental research design used to evaluate collection records should shed much light on the comparative effects of "individualized" collection over the standard methods now utilized in the New York City courts.

Looking at the outcome from the point of view of revenues collected, the picture is even more positive. Because substantial amounts of money had been paid by some offenders who then defaulted (and have outstanding warrants, or have been resentenced), the proportion of revenues collected exceeded the proportion of cases resulting in full payment. Within 11 months after the end of the pilot year, \$71,671 had been collected-77 percent of the \$93,078 imposed by judges during the pilot year.

## **VII. ASSESSING THE ROLE OF THE DAY FINE**

## IN SENTENCING REFORM

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

That the volume of fines imposed in penal law cases remained stable suggests that, despite the introduction of new procedures requiring calculation of fine amounts using heretofore unfamiliar methods, the day fine proves an attractive sentencing option with advantages over the fixed-sum fine. That 73 percent of all fines imposed during the first year of the pilot were set using the new procedures further attests to the usefulness of the system designed by the project's planning group.

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

The greater dispersion of fine amounts within the currently permitted ranges offers significant evidence that judges have used the new procedures properly to differentiate more fairly among offenders of differing economic circumstances. The stable rates of distribution of fine sentences across offenses of different severity 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.

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

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

custodial sentences that can be scaled to provide appropriate levels of punishment across offenses of varying gravity-can provide an array of punishments for less serious crimes.

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

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

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Norval Morris a- Michael Tonry, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (New York and Oxford: Oxford University Press, 1990) p.112