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FINES IN SENTENCING: AN EMPIRICAL STUDY OF FINE USE, COLLECTION  
AND ENFORCEMENT IN NEW YORK CITY COURTS

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Working papers written in conjunction with Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction, Sally T. Hillsman, Joyce L. Sichel, Barry Mahoney, Vera Institute of Justice, New York, 1984:

- #1 - Report on American State Statutes Relating to Fines in Criminal Cases, Joyce L. Sichel, 1982
- #2 - Report on Model Codes Relating to Fines in Criminal Cases, Joyce L. Sichel, 1982
- #3 - Federal Statutory Law Relating to Fines in Criminal Cases, Joyce L. Sichel, 1982
- #4 - Case Law and Constitutional Problems in Defaults on Fines and Costs and in the Disposition of Fine Revenues, Alice Dawson, 1982
- #5 - Review of United States Fines Literature, Ida Zamist and Joyce L. Sichel, 1982
- #6 - The Use of Fines as a Criminal Sanction in American State and Local Trial Courts: Findings from a Survey of Clerks and Court Administrators, Barry Mahoney, Roger A. Hanson, Marlene Thornton, 1982
- #7 - Fines in Sentencing: An Empirical Study of Fine Use, Collection and Enforcement in New York City Courts, Ida Zamist, 1981
- #8 - Report on Visits to Selected State and Local Courts, Joyce L. Sichel, 1982
- #9 - U.S. District Court Fine Imposition and Collection Practices, Joyce L. Sichel, 1982
- #10 - Fines in Europe: A Study of the Use of Fines in Selected European Countries with Empirical Research on the Problems of Fine Enforcement, Silvia S.G. Casale, 1981

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## EXECUTIVE SUMMARY

In 1981 the Vera Institute of Justice conducted a qualitative and quantitative study of the use of the fine as a criminal penalty in the Criminal and Supreme Courts of the City of New York, funded by the City of New York and by the National Institute of Justice. The report of this research is a comprehensive review of the fine as a sanction in the administration of punishment within the City's criminal justice system.

The study explores how the fine is administered in all the courts of the five boroughs which comprise New York City. The frequency with which the fine is imposed as a sentence at the different court levels provides an important contrast. At the summons level, fines are, for all practical purposes, the only penalty levied; most offenses covered by summonses are non-criminal violations of law. At the other end of the spectrum is the Supreme Court, which handles felony offenses of a generally serious nature. A fine-alone sentence is imposed in less than five percent of the cases disposed at this level, and is uniformly rejected as an appropriate sanction for crimes of violence. Finally, at the Criminal Court level, fines are the most frequently imposed sentence for a variety of offenses, ranging from nuisance offenses (e.g., gambling) to non-trivial cases disposed as misdemeanors. Annually, the fine-alone sentence is used in approximately one-third of the sentences imposed for arrest cases in the City's Criminal Court.

The Criminal Courts are the court of original jurisdiction for all misdemeanor and felony cases, but retain jurisdiction only for misdemeanors; they also have separate parts to process summons cases as the result of a fairly recent court reorganization. The wide diversity of offenses handled in the Criminal Court and the high volume of fine sentences make this court the primary site for our study of fine imposition, administration, and enforcement in New York City. While the Vera research concentrates on the study of fine use at this level, it also includes an extensive review of fine use at the Supreme Court level and a summary of fine imposition at the summons level.

A series of interviews with nine Criminal Court judges, as well as with the staff of the court cashier's office, coupled with visits to the courts to observe fining practices firsthand provide the basis of the qualitative research included in this report. The report discusses the range of sentences (including imprisonment, probation, fine, conditional discharge, restitution, or a combination) available to judges at sentencing and offers the judges' own explanations as to why the fine is selected frequently for certain types of offenses. Judges also provide their insights on the ways in which they view the nature of the offense and offender characteristics when deciding upon a sentence. Most judges interviewed expressed the view that the fine, after the conditional discharge, is the most lenient sentence.

Judges were asked to describe how they determine the monetary value of the fine once it has been selected as the appropriate sanction. The offender's ability to pay, offense seriousness, and number of prior convictions all appear to affect the fine amount. The amount may also be contingent on a judge's view of whether there are likely to be further violations committed to pay it. Fine sentences are most often stated as dollars/jail days (e.g., \$150/10 days), with most judges reporting that they very rarely impose fines of more than \$250.

The research also addresses in detail the administration of fines in each borough. The mode and terms of payment are compared between the five criminal courts. Court procedures for the setting of payment schedules and the actual collection of fine dollars are described. Most judges appear willing to accommodate the offender who cannot pay the entire fine amount at once. In the lower court, one date is typically set for a deferred payment, but this tends to become in effect an installment plan, as a series of subsequent dates for payment are set. Judges generally, but not always, maintain the authority to grant adjournments to pay.

The problem of fine default and the warrant procedures this initiates are discussed in detail. Fined offenders who fail to appear before a judge to pay their fine on the calendared date are issued a bench warrant for their arrest. Form letters are routinely sent by the Police Department Warrant Division, which is responsible for warrant enforcement, to all persons for whom warrants have been issued; this gives them a chance to return to court voluntarily to make payment. Whether or not a defaulter who does not return voluntarily is returned to court is largely dependent on the actions of the Warrant Division, which determines the priority each warrant receives. For fine cases, Supreme Court felonies are given top priority, while defaulters in the Criminal Courts are accorded second priority. Persons returned to court on a warrant may be sentenced to the number of jail days stated as the alternative to their original sentence, or resentenced after any mitigating or exacerbating circumstances are taken into account by the judge.

The study's quantitative examination of fine usage in the Criminal Courts is based upon a sample of all arrest cases sentenced during the period October 22 - 29, 1979. Analysis of these data reveal that the fine is the most frequently imposed sentence, constituting 31% of all sentences. Two-thirds of all sentences for gambling are fines, as are one-third of all disorderly conduct sentences, one-third of all drug sentences, and one-fifth of all assault sentences.

The study found that 74% of all dollars fined citywide for the study period were collected within one year of sentence. Eighty percent of those offenders who were fined had their cases calendared subsequent to sentencing for payment. Six additional payment dates were not unusual, indicating that most fined offenders delayed payment or encountered difficulty raising the money to pay their fines. Of those whose cases were adjourned, 66% had at least one warrant issued for their arrest due to a

failure to return to court on the appointed date. Nevertheless, two-thirds of all defendants sentenced to a fine paid in full within one year, most within three months.

Vera researchers also examined the use of fine sentences in the Supreme Court. Imposition of the fine is much less common at this level because of the seriousness of the offenses which reach disposition in the upper court. According to statistics provided by the New York State Office of Court Administration and the Division of Criminal Justice Services, fine-alone sentences are handed down in less than five percent of all Supreme Court cases.

Interviews were conducted with five Supreme Court judges, who discussed their sentencing practices and views. As at the Criminal Court level, researchers explored with the judges the range of felony sentences available to them at sentencing. Discretion in felony sentencing is limited by legislation which calls for mandatory imprisonment for violent crimes, but judges also indicated that the nature of the offense and certain offender characteristics influence their choice of sentence. The fine is rarely imposed because of the seriousness of the offenses and because, in the words of one judge, most judges just "don't think fine" when disposing of such cases.

There are certain offenses, however, for which a fine is likely to be imposed in Supreme Court. The majority are non-violent felonies (e.g., possession and/or sale of narcotics) and white-collar crimes. Fine amounts generally fall in the \$250 - \$1000 range, and judges tend to set a fixed installment plan for payment. Several judges stated that poverty, as indicated by information in the Probation Department's presentence report, is a main reason fines are not imposed more often.

Default proceedings in the Supreme Court are initiated against those who fail to comply with the terms of fine payment, and these warrants are assigned top priority by the Police Department Warrant Division. Special note is made of the fact that, in cases where corporations are the defendants in white-collar crimes, individual officers are routinely indicted as co-defendants to insure accountability.

The research addressed the administration of fines in the Supreme Court in each borough. Interviews with the General Clerks of the courts provide the basis for report's detailed description of collection procedures and record-keeping.

The report's quantitative analysis of Supreme Court case dispositions during the week of October 22-28, 1979 showed that no fine-alone sentences were handed down during this sample period. However, fine/probation sentences were handed down in two percent of the cases, for charges which included sale of a controlled substance, possession of stolen property, and attempted assault.

Both the Criminal and Supreme Courts occasionally require a defendant to make restitution in cases where an identifiable victim has suffered economically as a result of the offense. Resti-

tution as a monetary sanction differs from the fine both in theory (the intent of restitution is not merely to punish the offender but to make the victim whole again) and in practice (payment is made to the victim and not to the courts). Vera researchers briefly explore the imposition of restitution, which is usually an add-on to a sentence of probation, conditional discharge, or an adjournment in contemplation of dismissal. The problems encountered in the imposition of restitution are similar to those involved in fining. The poverty of many defendants is said to make its imposition a hardship and to make collection difficult.

In addition to the qualitative and quantitative sections on the Criminal and Supreme Courts, Vera researchers also attempted to assess the attitudes non-judicial actors in the criminal justice system held about the use of fine sentences. Telephone interviews with eleven fined offenders, while too few to produce generalizable results, did reinforce the views offered by the judges who were interviewed. Individuals who were fined felt that the sentence imposed was fair, lenient, and much preferable to a short jail term.

The attitudes of prosecutors and legal aid attorneys toward the use of fines, and the procedural operations of the Probation Department, the Police Department's Warrant Division, the Department of Correction, and various city and state fiscal agencies are also discussed in the final section of the report. Legal aid attorneys, while somewhat negative about fine sentences because of their clients' poverty, nonetheless find it preferable to a short jail term. Both prosecutors and legal aid attorneys agreed that fines are inappropriate sentences for crimes of violence. The fine tends to be seen as a "middle-class" option which discriminates against the poor. Others argue that the entire criminal justice process, from arrest to disposition, becomes the punishment, and that the fine imposed at the end of the road is merely another element of this trauma.

A number of other agencies play an active role in the fining process, and their operations are described in the report. The Probation Department is responsible for developing presentence reports, some information from which may influence the sentencing judge's decision to fine. The Warrant Division of the Police Department is charged with tracking down fine defaulters and returning them to court. The Department of Correction takes charge of fine defaulters who have been resentenced to the jail alternative of their original sentence. Estimates place the number of fined offenders who end up serving jail time at five percent of the total.

The last group of organizations playing a major role in fine administration are various state and city fiscal agencies. All fine revenues except those received from some Vehicle and Traffic Law offenses (which are shared with the state) are deposited in the New York City General Fund. Fine revenue is not earmarked for any specific purpose.

In recent years, the place of monetary penalties, among



which the criminal fine has preeminence, has become an important sentencing issue for criminal justice researchers and practitioners in the United States. The Vera Institute of Justice, long involved in criminal justice reform, has attempted to contribute to the development of fine research by this detailed, empirical examination of how fines are used and administered as criminal sanctions in the New York City court system. It is hoped that the understanding of court operations which emerges from this research will serve as the basis for improving current practice and for developing innovative alternatives.



OVERVIEW

A relatively recent surge of interest in the use of the fine as a sanction in criminal cases has resulted in a growing body of literature on the topic. Research evidence on the use of fines in American trial courts at the local, state and federal levels suggests not only that fines are used more widely and for a broader range of non-trivial offenses than has been recognized, but also that in many different types of courts they are collected and enforced more successfully and expeditiously than commonly assumed even by courts themselves.

The Vera Institute of Justice has addressed the need for substantive information about American and European fining practices at the criminal court level through research.<sup>1</sup> Information on all aspects of fine imposition, collection, and enforcement in the New York City Criminal Courts was documented as part of this comprehensive study. Because the New York City site is also the location of the Institute, researchers were able to study fines in the City in great depth, without the restrictions imposed on out-of-state research.

The New York research was conducted throughout 1981, and reported as Working Paper Number Seven of Vera's Fines in Sentencing Project. Techniques included interviewing judges, nonjudicial court personnel in various capacities, and noncourt personnel in the criminal justice system; observing courtroom and cashiers'

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<sup>1</sup>Sally T. Hillsman, 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. Silvia S.G. Casale and Sally T. Hillsman. 1986. Enforcement of Fines as Criminal Sanctions: The English Experience as a Criminal Sanction. Washington, D.C.: National Institute of Justice (forthcoming).

office operations; quantitative analysis; and interviewing fined offenders regarding what the fine meant to them and why they did or did not pay. It is reissued at this time, with minor revisions, because of the continued and growing interest in fine sentences across the country, as well as because Vera is undertaking a planning project in 1986-1987 in New York City focused on the introduction of a day-fine system of setting fine sentences.

The structure of this document reflects the New York City court system. Part I treats Criminal Court arrest and summons cases at length. Fines use in the Supreme Court Criminal Terms is described in Part II. Lastly, Part III describes the attitudes of prosecutors, public defenders, and the Probation Department toward use of the fine, and the operations of the Police Department Warrant Division and the Department of Correction with regard to enforcement of fines sentences.

This overview will briefly describe the New York City court system and laws governing fines. The revenue aspect of fines will be discussed and related to the cost of court operations.

### Court System

Both the Criminal Court and the Supreme Court of New York City are part of the New York State Unified Court System and are thus administered by the State. The Criminal Court of the City of New York is a court of original and limited jurisdiction. All arrestees are either brought here for arraignment within several hours of arrest or given a desk appearance ticket at the police precinct after being booked. The desk appearance ticket is a sum-

mons directing them to appear in court at a specified date (usually ten to thirty-five days after arrest). Although judges in the Criminal Court may not adjudicate felonies, they conduct preliminary hearings and either hold the case for a grand jury, reduce the charge(s) to misdemeanor(s), or dismiss the case. Most defendants are charged with Penal Law offenses, and a small percentage with Vehicle and Traffic Law and various local law offenses.

The Criminal Court is a fast-paced court which is dominated by plea negotiations. Fewer than one percent of the dispositions are by trial. Half the cases are disposed at arraignment, preventing unnecessary subsequent calendaring of cases.

The pace is even faster for the summons calendars of the Criminal Court. These calendars are filled with defendants charged with not paying subway fares and offenses against various local ordinances.

The sixty arrest parts citywide come under the administration of Borough Chief Clerks--one for each of the five counties--who in turn report to a Chief Clerk, who is at the headquarters in Manhattan (New York County). The Chief Clerk, officially entitled Deputy Executive Officer for Operations, reports to the Executive Officer of the Criminal Court of the City of New York.

The caseload of the Supreme Court Criminal Terms is nearly exclusively felonies. The few misdemeanors found here either accompany felony indictments or come under the jurisdiction of special prosecutors. Fifteen percent of the dispositions are by trial.

The Supreme Court has 125 court parts, with a General Clerk responsible for the operation of each county. The General Clerks

in Manhattan and the Bronx (which comprise the First Judicial Department of the State) report to the Executive Officer of the Criminal Court, whose authority extends to Supreme Court Criminal Terms, First Department. The General Clerks of Kings, Queens, and Richmond report directly to the Office of Court Administration for New York City Courts. The General Clerks of these three counties are also responsible for Civil Terms.

The civil agencies that share adjudication of summonses with the Criminal Court are not part of the state court system, but are bureaus of city agencies.

#### Statutory Provisions Regarding Criminal Fines

Articles 65, 70, and 80 of the Penal Law provide sentence options of probation, conditional and unconditional discharges, incarceration, and fines, respectively. The sanctions may be imposed in various combinations.

There are mandatory prison terms for certain felonies, with a life term the allowed maximum. Maximum class A misdemeanor jail time is one year, class B misdemeanor time is ninety days, and violation jail is fifteen days. Probation terms are five years for felonies, three years for class A misdemeanors, and one year for class B misdemeanors. Probation is not authorized for violations.

According to Sections 80.00 and 80.05 Penal Law, maximum authorized fine amounts for individuals are \$5,000 for felonies, \$1,000 for class A misdemeanors, \$500 for class B misdemeanors, and \$250 for violations. Fines may exceed this schedule for crimes of gain, which are punishable by double the gain. Hearings to determine such amounts are to be conducted pursuant to Section

400.30 of the Criminal Procedure Law. Pursuant to Section 80.10 Penal Law, fines for corporations may be as high as \$10,000 for felonies and \$5,000 for misdemeanors. Regulatory statutes, not part of the Penal law, have their own schedules of fines and jail terms.

Indigency hearings are provided for by Section 420.10 (2) of the Criminal Procedure Law.

Section 420.10 (3) of the Criminal Procedure Law sets limits on the period of incarceration that may be set as an alternative to a fine. It may not exceed one year for a felony fine, one-third of the maximum authorized imprisonment for a misdemeanor, or fifteen days for a violation.

#### Fine Revenue

An in-depth discussion of the amount of money generated by fine collection is included in the administrative sections of this report. The civil agencies bring in several times the amount that it costs to run them. The agencies were founded to levy and collect fines. The goal of cost effectiveness is not only openly stated, it is the reason for these agencies' existence.

One of the primary advantages court staff mention regarding the imposition of fines is the revenue generated. But as we will see, fine revenue is obviously a small fraction of the total cost of court operation. Furthermore, the cost of enforcing payment is sometimes regarded as a reason for lack of vigorous enforcement.

The figures below are 1980 fines from each part of the court operation and amounts paid at correctional facilities to secure release from jail for noncompliance.

Criminal Court arrest cases	\$2,180,000
Criminal Court summonses	1,295,000
Supreme Court	1,028,000
Dept. of Correction	<u>207,000</u>
Total	\$4,710,000

Most of this money went to the City general revenue fund, which pays a small part of the courts' budgets. Only fines raised from certain Vehicle and Traffic Law offenses go to the State.

This \$4.7 million in fines replaces general revenue funds by a small fraction of the cost to run the courts, most of which is borne by the State. According to fiscal year 1982 figures provided by the Office of Court Administration for New York City Courts, the Criminal Court budget is \$420 million and Supreme Court Criminal Terms budget is about \$50 million.

In the New York City courts, fines are not intended to produce revenue, although the dollars they provide are cited as an advantage. Vera researchers learned in out-of-state site visits that there are other states and cities where this feature of fines is so important that the cost to the system is kept in mind when setting the amounts of fines.



PART I

FINES USE IN CRIMINAL COURT  
FOR ARREST CASES

SECTION 1: HOW CRIMINAL COURT JUDGESMAKE THE DECISION TO FINEA. INTRODUCTION

Research on the New York City component of the Vera Fines Project began with asking those who do the sentencing how they go about this job.

The plan was to interview nine Criminal Court judges out of the sixty-five or so who sit in the City. In order to get the most out of these sessions, Vera asked the Executive Officer of the Criminal Court to provide a list of judges who he thought were interested in this area and who had varied backgrounds. It was felt that a random sample strategy might produce some participants who could comply in a cursory fashion simply to accommodate the researchers. The entire sample consists of two judges from each of the four major counties and one from Richmond. This report presents the findings from these discussions. (Appendix I-A is a copy of the survey instrument.)

Although the Criminal Court was undergoing a decentralization of the summons parts, the interviews were limited to arrest cases only.<sup>2</sup>

The fine is, by far, the most common sentence in the New York City Criminal Court. About one-third of the 100,000 sentences imposed in arrest cases annually are fines. It is the most commonly

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<sup>2</sup>During early 1981, when the interviews were conducted, summonses were returnable in some Criminal Court arraignment parts that handle arrests. Because most summonses are disposed at that point, few reach the all-purpose parts. Staff from the centralized summons part located at 346 Broadway had not yet been deployed to the counties, but some Borough Chief Clerks were planning to open a separate summons part when they get this staff.

used sentence, followed by conditional discharge, time served, jail, probation, and unconditional discharge.<sup>3</sup>

Judges make the sentencing decision in the absence of guidelines. The limitations placed by the statutes allow a broad range of discretion relative to sentence type, jail time, and fine amount.<sup>4</sup> Yet there do appear to be informal norms among judges for sentencing certain common offenses; this will be described in the section on fine amounts. The topics covered herein include philosophical and practical discussions of factors that affect the sentence decision, the types of cases for which fines are selected, fine amounts and terms of payment, indigency, default, restitution and reparation, white-collar offenses, and administrative issues. To a limited extent, information and opinions of the judges are supplemented by researchers' courtroom observations.

#### B. FACTORS AFFECTING THE SENTENCING DECISION

The most important factor in the sentencing decision is the offense committed. Reliance upon the concept of the offense may be misleading, however, as neither the complaint nor conviction charges may accurately connote the seriousness of the incident for which the offender is being sentenced. Often the complaint charges are technically correct, but imply a gravity that exceeds the actual incident.<sup>5</sup> On the other hand, the charge reached

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<sup>3</sup>See Section 4 of this Criminal Court report for quantitative analysis of sample sentences.

<sup>4</sup>Statutes that curb discretion by mandating jail for certain offenses or repeat offenders are not relevant for the lower court judge.

<sup>5</sup>Vera Institute of Justice. 1981. Felony Arrests: Their Prosecution and Disposition in New York City's Courts. Revised edition.

through plea negotiations may be less serious than the incident.<sup>6</sup> Two common reduction mechanisms are to drop down to a less serious degree of the offense and to make the conviction charge an attempt of the complaint charge (which lowers it one class). The judge will be constrained in sentencing by the final charge, and so looks at whether an offense was violent, if there was serious injury or property damage, the value of property loss, or whether it is a nuisance offense such as prostitution.

The offender is assessed in terms of age, whether employed or in school, drug or alcohol addiction, obvious psychological problems, and whether homeless. The judge tries to assess if the offender is an assaultive or (criminally) aggressive type of person. In conjunction with personal characteristics, judges consider the offender's criminal history. Judges handle first offenders very carefully, attempting to prevent further criminal behavior before the individual has made crime a way of life. The older first offender especially is treated leniently because this is regarded as an isolated incident rather than the start of a pattern. In sum, the judge decides whether the offender can be rehabilitated, is beyond redemption, or simply can be slowed down temporarily in a perpetually criminal lifestyle.

Most judges look favorably on court attendance by the defendant's family. If it is felt that they can make a contribution toward rehabilitation by, for example, encouraging the offender to

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New York: Longman Publishers.

<sup>6</sup>Fewer than one percent of the dispositions in Criminal Court are by trial. Essentially, therefore, plea and sentence negotiation occurs in virtually all convictions and sentences. (This trial rate is from the Criminal Court Comparative Statistical Profiles from 1977 to 1980, prepared by the Office of Court Administration

visit his or her probation officer regularly, if they are included in the sentence plan. Judges dislike jailing a woman with dependent children or imposing a high fine on a person of limited means who has dependents.

There are a number of sources for the above information. The court papers describe the charges and the incident, and the RAP sheet shows the criminal record. While most of the verbal communication is from the Assistant District Attorney (ADA) and defense counsel, some judges also talk directly with defendants and family members. The ROR report prepared by the New York City Criminal Justice Agency contains information on job, family, and place and length of residence. Finally, there may be a Probation Department presentence report. Because, citywide, half of the Criminal Court dispositions are at arraignment, and thus, anywhere from one-quarter to one-half of the sentences are also at arraignment, it is obvious that a great many sentences are imposed without such a report.<sup>7</sup> The judges we interviewed estimated that they had the report between 5 percent and 20 percent of the time, taking into account all of the different types of parts that they sit in.<sup>8</sup> One was even more specific, stating that he almost never has a report for violations, and that he has presentence reports for about one-third of the class B misdemeanor convictions and for more than half of the class A misdemeanors.

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for New York City Courts.)

<sup>7</sup>The disposition rate at arraignment varies among the counties. It is much lower where there is prearraignment because the arresting officer has been excused. Judges prefer to have the officers and civilian complainants present for possible consultation at the time of disposition.

<sup>8</sup>There are arraignment, all-purpose, and jury trial parts in all counties except Richmond, and youth parts in some counties.

Pursuant to Section 390.20(2) CPL, probation and jail exceeding ninety days may not be imposed without a report, although the defendant may waive it. Reports are particularly desirable for youths when there is any hope of rehabilitation, and Section 720.20(1) CPL requires a presentence report for defendants eligible for Youthful Offender adjudication. It is therefore apparent that if a judge is not considering probation, class A misdemeanor jail, or Youthful Offender adjudication, a report serves no purpose. Also, if an offender is in jail on another case, one judge interviewed often sentences to time served on the instant case, letting the jail sentence cover both cases. Another variation is that a judge may use a report prepared for an old case, as long as it was not in the too distant past. Once it is decided to adjourn for a presentence investigation, however, the forthcoming report always includes a sentence recommendation--jail, probation, and conditional discharge are most common--and the judges interviewed report they often do follow the recommendation. The judges indicated that fines are rarely recommended, but when they are, an amount is usually not specified.

Many sentences are part of the three-way plea agreement in which, typically, the ADA seeks jail or, if it is a weak case, makes no recommendation; defense counsel seeks leniency; and the judge has the ultimate authority to either approve a resolution reached by the attorneys or impose some other sentence. Alternatively, if a presentence report has been ordered, judges often exclude the attorneys from the sentencing decision, feeling that they have forfeited their right to negotiate at this advanced

stage, and that this is a more serious case requiring careful consideration of how to sentence. Whether the sentence is negotiated or not, judges interviewed saw it as their role to weigh the incident; the offender's history, characteristics, and situation; and the adversary recommendations in order to decide upon a sentence.

Nevertheless, this complex process takes only a few minutes in the lower court (although judges sometimes study the more serious cases in chambers before the court appearance). With a maximum of six hours of bench time daily (perhaps an over-estimation), and about fifty defendants who appear in an all-purpose part, the average defendant spends a maximum of five minutes before the judge. The pace is even faster in the arraignment parts and the judges are under great pressure to evaluate these new cases rapidly, disposing of as many of the less serious cases as possible in order to reserve the all-purpose parts for felony hearings (preliminary to indictment) and defendants entering misdemeanor not-guilty pleas to charges which the judges feel should not be dismissed.

#### C. SELECTION OF A SENTENCE

In order to better understand how a judge selects a fine as the appropriate sentence for a given offender and offense, the panel of judges interviewed were asked what sentencing goals they try to achieve when imposing a fine. The traditional goals, or justifications, for punishment are rehabilitation, individual and general deterrence, incapacitation, restitution, and retribution. The majority of judges interviewed see the fine as a limited sanction, because apart from punishment per se, the goal of individual deterrence is the only one addressed by its imposition. The

judges felt that the fine does not effectively address the remaining goals.

A judge has relatively few sentences from which to choose. In fact, some mentioned that they wish there were more alternatives.<sup>9</sup> The available choices are fine, jail, probation, and conditional discharge (CD). The jail sentence includes time served--often the time only from arrest to arraignment--and this in some respects is a category by itself. Additionally, there are combinations, which fall into two categories: fine and jail, probation, or CD; sixty days jail and probation (also called "shock probation") or CD. The combinations tend to be viewed as variations of the basic options rather than alternatives.

The judges were asked whether they use combination sentences. None use fine and jail. (The reason for this should be apparent from the preceding discussion of sentencing goals and the forthcoming discussion of sentence severity and preference for the various sentences.) The judges interviewed vary on the use of fine with conditional discharge and probation. Those who do use these combinations feel that by using fine with a revocable sentence, the combination is a stronger deterrent. Default on the fine may constitute violation of probation or CD, for which the offender may be resentenced to jail. It is apparent that there is less flexibility in allowing a great deal of time to pay fines in combination as there is in the fine-only sentence, which is explored later in this report. Probation and CD are not, however, regarded by most judges as mechanisms to foster payment.

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<sup>9</sup>One respondent specified that there should be a sentence to psychiatric or psychological treatment.



There is, for the most part, agreement on the severity of sentences relative to each other. All judges in the panel named jail as most severe, followed by probation. One of the reasons probation is regarded as harsh is that it is for a protracted period--usually three years. Conditional discharge, by comparison, is for one year. Although judges may impose special conditions for CD, this is rarely done; when it is, the conditions are difficult to enforce. Only one out of the nine judges said that the fine is the most lenient sentence, while six felt that conditional discharge is less severe than a fine. One judge suggested that the rank order of the fine and CD depends on the amount of the fine, and another indicated only that a fine is a light sentence. None of the judges explained the low rank of the fine in terms of the difficulty collecting it.

Some of the judges indicated that offenders also consider the fine a light sentence. They are relieved not to receive jail and, in addition, the judges think those who are more sophisticated know that if they do not come in to pay and do not get rearrested, it is likely that there will be no punishment for default. Payment can always be made if the individual is rearrested.

Now that we have considered the implications of a philosophical framework for sentences, we turn to an examination of the decision process itself. This is a two-step procedure: (1) in/out; and (2) if in, how long; if out, probation, CD or fine? It must be noted that judges report they seek to impose the least severe sanction that is appropriate for a case, and they sometimes feel that the sentences imposed do not really address the problem that brought the offender to court. Unfortunately, they feel there are often no alternatives that are more appropriate.

Jail, other than time served, is reserved for offenders who inflicted serious injury, who are violently inclined, who have lengthy criminal histories, or for whom previous probation did not work. Jail is usually not recommended for first offenders and women with children. The selection among nonjail sentences is less clear-cut, and the characteristics discussed below are intended as a general description, not as hard-and-fast rules. Young offenders with few priors who need control and supervision are often put on probation, with an eye toward rehabilitation of the individual before crime becomes a way of life. One judge pointed out that probation is also used after a few arrests and is more severe than a fine, but it would make more sense to use it for first offenders when there is the greatest chance of rehabilitation.

Fines are the preferred sentence for motor vehicle and white-collar offenses.<sup>10</sup> They are also felt to be appropriate for assaults by individuals with no or few priors and in which there was little injury. For the offender who engages in a barroom brawl or a fight over a parking spot, the arrest is probably an isolated incident and is thus treated lightly.

Fines are widely used for gambling, possession and sales of small amounts of marijuana, prostitution and to a lesser extent, shoplifting. The first three are examples of nuisance offenses for which no sentence is likely to deter or rehabilitate. Jail or probation would serve no purpose. The idea, at best, is to remove

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<sup>10</sup>Motor vehicle offenses are relatively infrequent and white-collar offenses are not typically part of the Criminal Court arrest caseload; white-collar offenses usually come under the jurisdiction of the Supreme Court.

the profit. Some judges believe these offenders return to the streets to commit more offenses to pay the fine. The fine is thought to be a business expense for these cases. In many prostitution cases, some judges believe the pimp rather than the prostitute pays the fine, and her punishment may be extracted by his beating her for getting arrested. Many judges thus see prostitutes as societal victims rather than criminals, and some prefer CD or the sentence of time served between arrest and arraignment, which can be as much as one or two days.

Those shoplifters who steal because they are needy do not have the money to pay a fine, and should not be jailed. The judges feel they have no satisfactory resolution of these cases; the conditional discharge is the only humane answer. When an offender has come before the court numerous times on minor charges, occasionally judges switch from fines to jail with the aim of slowing down the offender at least temporarily.

The preference for the fine for some judges is tenuous--the fine is not preferred on its own merits, but because none of the other options is appropriate. It is used by default, recognizing the lack of options for offenders who need neither incapacitation nor rehabilitation. On a more positive note, other judges choose the fine because it is felt to be the most appropriate sanction either because the offense is somehow pecuniary or because the particular offender will respond to being "hit in the pocketbook."

Most of our respondents expressed preference for restitution and reparation for certain theft and property damage crimes. While primarily intended to compensate the victim, it is felt that they instill in the offender a sense of awareness and responsibility to others. Restitution and reparation are similar to the fine

insofar as they are monetary, but they are usually part of a probation or CD sentence.

D. THE FINE IN FOCUS

Once the fine has been selected as the appropriate sanction, two other decisions involve setting the amount and the terms of payment. The overriding pragmatic consideration is the offender's ability to pay. While some advocate relating the fine amount to seriousness (retribution) or to being high enough to counteract the temptation to commit a particular type of offense (deterrence), in the New York City lower court an estimated 75 to 90 percent of the defendants are poor. Policies which establish a fixed fine tariff for a certain type of behavior set high enough to deter the offender from repeating the crime or deter others from imitating would be meaningless where there is so much poverty. Even though some judges interviewed said that they use a fine as an individual deterrent, the repetition of nuisance crimes by offenders whose income is from such activities suggests that the fine may be little more than an inconvenience. The possible exception is for motor-vehicle offenses, but these are intrinsically different from offenses like selling marijuana in that motor-vehicle offenses do not produce income and tend to be committed infrequently rather than as part of a pattern that needs to be intercepted.

The fine amount is set after the judge takes the offender's means into account. Judges rarely avoid the fine altogether for a poor defendant. As used in this discussion, poverty or "indigency" refer to a person living on a very low income or on welfare. This person is viewed as able to pay a small fine of \$25 or

\$50. Indigency thus described is distinct from absolute destitution. There are defendants who are homeless and who may not know how to get any kind of social service. There are elderly people whose social security barely pays for rent and food who may turn to shoplifting food. Such utterly destitute offenders are not fined at all, and sometimes judges will request the offender's Legal Aid attorney to try to get help for them.

Researchers asked the judges how they ascertain means, especially when the overwhelming majority of fines are levied without a presentence report, generally a primary source of sentencing information. Judges report that these sources of information are most often the defendant, counsel, and the ROR report. Some judges prefer to converse directly with the offender; others restrict conversation with the attorney. The issue of having counsel provide means information merits attention here because the context is a high-volume court characterized by indigent defendants.

At least three-quarters of the Criminal Court defendants are eligible for Legal Aid. Also, because there is pressure to move the calendar, some defendants sentenced at arraignment are represented by Legal Aid even if they may not technically be eligible.<sup>11</sup> The reality of the situation at arraignment is that the Legal Aid attorney has met with the defendant once for just a few minutes to prepare a perfunctory, obligatory defense and knows

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<sup>11</sup>One judge suggested that the incentive for the Legal Aid Society to dispose of as many cases as it can lies in its using the statistics to substantiate requests for increased budgets.

very little about his or her client.<sup>12</sup> Even where counsel is privately retained, it is often low-budget, which means that in the limited time the attorney will devote to the case, he or she will not be able to learn and to verify much information about the defendant's resources. The result, then, is that defense counsel reports to the judge the unverified information received from the defendant. The judge can simply streamline the process by direct interrogation of the defendant.

Regardless of the source, the judge seeks information about employment status, salary, family and dependents, expenses, debts, savings, and assets.

Most of the information received is from the defendant's self-report, and Vera researchers questioned the judges about their views on the veracity of such reports and whether resources would be underreported to reduce the fine amount. This elicited a wide range of responses, all of which discounted that accuracy is a problem. Judges believe that defendants do not lie to them because they are in awe of the judge, and for other reasons; include that lies would be insignificant because these people have so little anyway; that defendants often do not know what the information is to be used for; that defendants may inflate resources predisposition in the effort to build an image of solid employment in the hope of being ROR'd; and that defendants do not say they cannot afford any fine at all because they fear being sent to jail.

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<sup>12</sup>This is not intended as an indictment of Legal Aid. The purpose is to describe the criminal justice process recognizing the limitations which arise out of limited resources.

Other indicators of indigency used by judges include the offender's inability to make low bail, having Legal Aid or cheap private counsel, being on welfare, and address of residence.

In addition to ability to pay, judges indicate that incident seriousness and the number of prior convictions affect the fine amount. The age of the offender may either aggravate or mitigate. One approach judges report is to treat the older "situational" offender leniently (i.e., with a low fine). This person probably would not repeat the behavior anyway and thus does not have to be deterred, but judges are aware of public pressure to prevent offenders from getting off with no punishment at all. A less common approach reported is to impose a higher fine on the older offender who has no or few prior (resources being equal) because he or she should know better and set an example for young people.

The amount of the fine, as well as whether it is used at all, may be contingent on who pays and whether judges believe there will be further violations committed to pay it. For offenders whose primary source of income is crime, judges report that fines are kept low in part to minimize the amount of illegal activity needed to pay, which would pass the cost on to future victims or users of illicit services or products. Judges are aware of the futility of the tools currently at their disposal to deter and rehabilitate this sort of offender.

There is disagreement among the judges interviewed as to whether a fine should be imposed if someone other than the offender will pay it. Some believe that the offender alone should pay, even if it means repaying the person who extended the fine money as a loan. Thus a youth should be prompted to get a job to pay back his or her parents who laid out the fine money. Other

judges, however, feel that when parents are hit in the pocketbook by paying a fine for their child, they will make an effort to keep that youth in line.<sup>13</sup>

There are some offenders for whom judges believe any fine amount causes grave hardship. Although he or she might be able to pay a token amount, some judges feel the credibility of the system is lost by imposing a low fine. The offender who claims not to be able to afford a fine, whether at the time of sentencing or at subsequent appearances at which payment should have been made, is entitled to an indigency hearing and may be resentenced pursuant to Section 420.10(2) CPL. He or she may not be imprisoned for failure to pay if unable to do so. The loophole for the court in such cases is that the judge may resentence the offender to jail. To preclude requests for indigency hearings, some judges ask the offender, "Can you afford to pay x dollars?" Once the offender has committed him/herself to the amount, it is difficult to later say that the fine is too high. Nevertheless, when an indigency hearing is held, it is informal and rapid. The defendant remains standing before the bench, is quickly administered an oath, and is asked a few questions about means. Vera researchers observed one hearing that could not have lasted more than two minutes. There are no witnesses sworn. This may seem a perfunctory way to conduct a hearing, but court time is being used to ascertain whether someone can afford to pay \$25, and some would suggest the payoff may not be worth the resources to obtain it.

In instances of indigency, with or without a hearing, where the fine is not selected or where there must be a resentence due

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<sup>13</sup>One judge went a step further, saying that when parents are put



to inability to pay a fine, a judge will use CD, a very short jail term for repeat offenders, and occasionally probation. The salient judicial sentiments are to avoid jail because it is the most drastic sentence and because it had been rejected initially, and not to use probation because it was also determined initially that the offender would not benefit from supervision. However, the judges' reactions to this issue were not uniform other than to prefer a CD. Those who favor leniency tend to regard these offenders as societal victims who suffer tremendously every day by virtue of living in extreme poverty.

The law provides that a fine may be double the gain from a property crime. This allows the judge to exceed the fixed statutory maximums of \$1,000 for class A misdemeanors, \$500 for class B misdemeanors, and \$250 for violations. It appears this provision is almost never used because of pervasive poverty. Fine amounts are typically far below the authorized maximums.

Fines are individualized primarily based on means and criminal history. In the absence of formal guidelines, informal norms are used in some counties for certain offenses. Nevertheless, the overall result is that disparity in fine amounts is limited, largely because of the constraints of imposing amounts that judges feel offenders will pay. Even when we find one offender being fined double the amount of another, we tend to be comparing \$25 and \$50. Several judges observed that in Queens the offenders have more resources so fines there are probably higher. (They did not mention Richmond, where the offender population also may be

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to the expense of a lawyer for their child, it is a greater deterrent than anything the judge can do.

relatively more affluent, but this is undoubtedly due to the small caseload in that county.)

The judges reported that they rarely impose fines that exceed \$250. Prostitutes are fined \$25, \$50, or \$75. One judge said he fines at least \$200 for deliberate aggressive behavior, which he described as assault, driving intoxicated, and gambling. He fines under \$200 for larceny, three card monte, and marijuana sales. A second fines \$250 for gambling and marijuana sales. Another judge's general guidelines are \$25 to \$50 for a violation conviction, \$100 for a class B misdemeanor, and \$350 for a class A misdemeanor. The minimum ever imposed is \$25 for an arrest case. An interesting category is motor vehicle cases. Based on judges' responses, we hypothesize that those fines will tend to be in the \$100 to \$200 range--if one has the means to own a car, one cannot plead poverty.

One judge said he prefers to fine an amount that he believes the offender will not be able to pay on the day of sentence. The subsequent adjournment prolongs contact with the court, rendering the fine an irritant instead of easily discharged, and extending the duration of the court's control over the offender.

Fine sentences are almost always stated as dollars or days.<sup>14</sup> There is no fixed dollar-day exchange rate in New York State, but there is a loose correlation inasmuch as lower fines are accompanied by alternatives of fewer days in case of willful default.

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<sup>14</sup>One exception is Section 221.05 of the Penal Law for which jail is not an authorized sentence and therefore may not be used for default. One judge said he does not accept pleas to that violation because there is no sanction for default. The other exception is that days are not specified when the fine is used in combination with conditional discharge. Violations of the conditions make the offender liable for a resentencing.

The alternative jail time is limited by Section 420.10 CPL to 15 days for petty offenses and one-third of the maximum jail authorized for misdemeanors. Judges were asked to explain their attitude toward fixed dollars-days exchange rate. Responses were mixed, with one stating that he used his own exchange rate system, and another stating that jail is so bad that he imposes a sentence of only a few days regardless of the dollar amount.

Once the amount of the fine is announced to the offender, he or she is asked whether payment can be made immediately. If so, the mechanics of payment are expedited according to the procedures of the particular county. If the offender can make only partial payment or no payment on the sentence date, the case will be adjourned. Judges' policies about the length of adjournment vary. Some ask the offender when he or she will have the money, and simply adjourn until then. Other judges tend to use a set period such as thirty days. The judge who likes to set a fine that will be an irritant sets a time a little shorter than the offender requests.

Specific installment plans are not worked out at this time. A look at a few case records will explain this--amounts paid at each visit to court vary and sometimes the case is again adjourned with no payment at all. It makes little sense to specify a schedule that will not be adhered to.

No matter what the payment plan is, judges tend to allow indefinite time to pay even small fines as long as the offender keeps coming to court, making a good-faith effort. A judge may threaten jail if it is felt that the leniency in time to pay is

being abused. One tells the offender to bring a toothbrush and be prepared to do short time (three to five days) if he or she returns the next time with no money.

There is inconsistency regarding whether judges instruct the offender to come in if only partial payment or no payment can be made on the adjourned date. Sometimes the court officers will do this, and some go so far as to inform the offender that anyone else can come in to make the payment (although the offender is not always given this information). In any case, the adjournment slips given to offenders are clear about consequences of not appearing.

#### E. RESTITUTION AND REPARATION

Restitution and reparation are first cousins to the fine. The former--in the form of money or return of property--is used with some frequency, but complete statistics are unavailable. The latter is rarely used because of the difficulties getting the offender and victim to agree on the cost of services for personal injury or property damage. Most judges interviewed, however, do favor reparation at least in concept.

Restitution and reparation may be part of an adjournment in contemplation of dismissal (ACD), which is not a conviction. As a sentence, they may be part of a CD or probation. The purpose of restitution and reparation is to make the victim whole again, but judges do feel limited by the offender's ability to pay and consequently are willing to specify amounts less than the loss.

Until recently, restitution payments were made directly by the offender to the victim for Criminal Court cases.<sup>15</sup> Thus it

was up to the victim to bring defaults to the attention of the DA, who would then have the case restored to the calendar. In 1978, Victim Services Agency (VSA) started a restitution program in Kings County, and extended it to the Bronx in the following year. VSA acts as a collection agency for restitution orders that are part of ACDs and CDs. The agency is not involved with enforcement other than to get defaulters back on the court calendar. Judges in both the Bronx and Kings said they tend to use the restitution sentence with a CD rather than probation because they feel that VSA offers a higher probability of collection than direct payment. Queens judges felt they could rely on the DA to bring defaulters to the court's attention once a victim complained of default, but one New York County judge prefers probation and the other said violations of CD are not enforced.

Regardless of the sentence option selected, willful default may be found to be violation of the conditions and result in a resentence to jail.

#### F. SUMMARY

The Criminal Court of the City of New York has jurisdiction over cases in which up to one year in jail can be imposed, and original jurisdiction over felonies. Close to 200,000 docket numbers were filed in 1980. After reduction of more than half of the roughly 80,000 felony charges, there were some 85,000 sentences in all, (including 5,000 resentences) to misdemeanor and violation

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<sup>15</sup>The Probation Department is the intermediary in Supreme Court cases in New York, Bronx, Kings, and Richmond counties. Restitution is generally part of probation in felonies. In Queens, probationers send money directly to beneficiaries.

conviction charges for arrest cases. Three out of every five of these sentences were fines.

The selection of the fine, as opposed to jail, probation, or CD, is a complex decision, albeit a rapidly made one. The judge sizes up the seriousness of the charge and the incident, whether the offender has any special problems that need attention, whether the offender is a candidate for rehabilitation, and the offender's criminal history and age. In theoretical terms, the fine is intended to punish for the immediate offense and deter the individual from committing future crimes, and is selected when incapacitation and rehabilitation are not necessary or will not be useful.

Pervasive poverty is the primary factor in deciding fine amounts. While the dollar value is connected to the offense seriousness, it is also predicated on what the offender can afford. The low fine is usually accompanied by lenient, almost open-ended, payment terms. Instead of setting a fixed installment schedule, a new court date is set each time the offender comes in to make a payment. As long as a good-faith effort is made to pay, the offender will not end up in jail. If absolutely too poor to pay, judges are likely to resentence to a reduced amount or CD.

The heavy dependency on low fines with little deliberate enforcement may be viewed as a way to quickly get rid of non-serious cases to conserve criminal justice resources for violent and otherwise non-trivial cases. A few of these activities are considered "societal ills" by the judges rather than "crimes," and decriminalization might be warranted.

## SECTION 2: ADMINISTRATION OF FINES

### A. INTRODUCTION

This section describes the administration of fines in the New York City Criminal Court. Descriptions will generally apply to the city as a whole, with county variations noted.

The research treated each county as a site. Data collection entailed observing activities in the cashiers' offices and interviewing staff there; interviewing the Borough Chief Clerks (BCCs) (Appendix I-B is questionnaire); observing arraignment and all-purpose part activities with particular attention to fines imposed, offenders coming in to make partial payments, and returns on warrants for failure to pay fines; and in three counties sitting on the bench with judges from our interview panel. Throughout these site visits we interviewed Assistant District Attorneys, defense lawyers, Probation Officers, Court Officers, and any other criminal justice personnel we met who were willing to discuss fines. One to three days were spent in each county. In addition, researchers interviewed the Chief Clerk and Executive Officer of the Criminal Court. This section will also present nonjudicial attitudes toward fines use. Observations by judges in Section 1 will be interwoven to reinforce or contrast findings from the administrative site work.

### B. MODE AND TERMS OF PAYMENT

Cash and money orders are the preferred types of payment. Cash that is suspected of being counterfeit is passed under an ultraviolet light. New York, Kings, and Queens accept checks from New York City residents. The Bronx does not take checks, and

Richmond accepts checks only when there is retained counsel who is known to the cashiers' office staff. Whenever checks are offered, the bank is called, pursuant to a directive by the State auditor. Cashiers pointed out, however, that even if there are sufficient funds at the time, this may not be so when the check must clear.

Cash bail can be used. Whoever put up the bail money (offender or surety) must sign to authorize such application.<sup>16</sup> The offender need not personally appear to pay; he or she may have someone else pay.

Researchers asked how an offender would know that cash bail could be used or that someone else could pay since there are no formal systems to inform offenders. The general response was that they would have to initiate the question or their lawyers would tell them.

Although there are no procedures for mail payment, money sent in to satisfy a fine is accepted. If less than the full amount is sent, a letter is mailed to the offender indicating this. There is a problem identifying the case if the docket number is not properly indicated.

Once a fine has been imposed, the next issue is whether the offender needs time to pay. In all counties, offenders who want to make immediate payment are accompanied to the cashiers' office by a Uniformed Court Officer (UCO).

Upon acceptance of the money, the cashier rings up the transaction on the cash register, into which the case paper has been

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<sup>16</sup>When bail is refunded, the city deducts and keeps two percent. For this reason, fines paid by cash bail are in odd amounts, such as ninety-eight dollars.



inserted so the payment can be recorded on it; issues a receipt to the offender if payment is by cash or money order as well as an adjournment slip if there are to be further payments; and returns the case paper to the UCO. This paper is the official court record for each case. The UCO returns to the part to mark the payment and receipt number on the calendar. This is performed in a fairly standard way throughout the city.

Policies and attitudes differ on the UCO's handling money. For example, in Manhattan, UCOs do not take the money; it is felt that there is less chance of malfeasance if fewer people handle the cash. However, the Kings Borough Chief Clerk believes that if the UCO takes the money, the court does not have to worry about the offender trying to leave without paying.

Offenders who need time to pay are given an adjournment slip on which the UCO fills in the docket number, adjourn date, fine amount, and the part returnable. This form is printed in Spanish on one side. There are county differences in procedures for adjourned cases with regard to where the offender reports on the payment date and whether cashiers have the discretion to grant further adjournments.

The Bronx is the only county in which the cashiers' office is like a court part unto itself; it has its own calendar and stores the case papers of all offenders pending full fine payment. Cashiers have discretion to adjourn cases within guidelines set by the unit supervisor. The cashier may take partial payment on the due date as long as it is at least half of the total due and not too

small, such as half of a ten dollar fine. Offenders who cannot pay enough are sent to the courtroom. Full or partial payments are accepted before the due date, and in the case of the latter, the offender is reminded when the balance is due. Those who come in after the due date (thus after a warrant has been issued for failure to appear) also report to the cashiers' office and the papers will be pulled from the warrant file, which is also located there. The late offender must appear before a judge, who will decide whether to give more time or commit to jail.

In Manhattan, offenders must first go to the all-purpose part that has the case. A UCO will pull the paper and accompany the offender to the cashier's office to make full payment. This offender is not called before the judge. Offenders who come in on the due date with less than full payment are called before the judge, as the cashiers cannot grant more time. Here, as in other counties, for those who come in voluntarily after the due date, the paper must be retrieved from the warrant file and the offender is brought before a judge.

In Kings, fined offenders report to the cashiers' office only if they come in on the due date, because the court parts will have sent those case papers to the cashier the preceding day. Otherwise the papers remain in the parts. Based on an agreement with the supervising judge, cashiers are permitted to allow one month more for offenders who make partial or no payment. For time beyond that, the offender must go before a judge. The Queens and Richmond operations are essentially the same, except that in Richmond the cashiers have no discretion to adjourn and must send the offender to the courtroom if full payment cannot be made by the due date.

Where cashiers may set future adjournments, they must first check the case papers to determine whether delinquency constitutes a violation of probation or conditional discharge. These cases must go before a judge.

In the four counties that do not have cashiers' calendars, cases scheduled for fine payment are on the court part calendars. When the papers are returned to the parts at the end of the day or with the UCO who accompanies the offender to the cashier, the payment, next scheduled date, and receipt number are recorded on the calendar.

Offenders further adjourned in the courtroom are given an adjournment slip by the UCO. Similarly, those adjourned by cashiers in the Bronx and Queens are given new slips or have the next date marked on the old slip if they have it with them. In Kings, however, the offender is instructed verbally and is given nothing in writing. Personnel in this office said that pressure due to the heavy workload meant that they do not have time for this.

Offenders who have been given adjournment slips often show up without them. Unless they report to the place where they are due on the exact date, court part or cashiers' office staff must get the docket number through the computer system so that the case papers can be obtained. Terminals are not in the parts or most cashiers' offices, so personnel must go to or call the Central Clerk's Office (CCO).

Another difference found was in the use of receipts. During the few months that site visits were made, new cash registers were introduced to the cashier's offices. The registers yield a tiny receipt, like a grocery store receipt. New York and Queens counties were still using the old machines at the time of the site

visits. In the Bronx, the small receipts are stapled to the old cards, which the cashier stamps "Partial Payment" and marks balance due if not paid in full. The Richmond cashier gives the offender the small new-style receipt and marks on it any amount still due. Kings offenders are given the small receipt and are told the next date and amount owed. Researchers were told once again by office staff that they simply do not have time to do more. Citywide, receipts are not issued for checks because they may bounce; the offender will have the canceled check if there were funds to cover it.

C. DEFAULT - THE OTHER SIDE OF THE PAYMENT COIN

Offenders who need more time to pay will almost invariably be granted it. Those who tell a judge that they simply cannot afford to pay at all will be resentenced, usually to conditional discharge.<sup>17</sup> Despite this leniency, cashier supervisors in the Bronx, Kings, and Queens estimated that at the end of each day more than half of the arrest case papers are left over, representing no-shows. This is in line with researchers' courtroom observations, where we were shown calendars late in the day on which much of the "To Pay" section was still blank. These are the fine defaulters--those who forget, do not care, do not want to be inconvenienced, or are consciously trying to avoid payment. To be more specific, they may be regarded as willful defaulters, not having even made a show of effort by coming in with an excuse, although some may return to court at a later date to pay (see Sec-

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<sup>17</sup>See Section 1 of this Criminal Court report.

tion 3 below).

The primary reason offered for default is lack of money. One Borough Chief Clerk said offenders often do not understand post-conviction procedures and fear being jailed. They are not always told explicitly to come in for their next court appearance even if they have no money for payment. Although another Borough Chief Clerk said that the adjournment slips given by the court specify that a warrant will be ordered for failure to appear, other persons interviewed in the course of this study said offenders often discard these slips before leaving the courthouse.

Bench warrants are issued for nonappearing fine offenders.<sup>18</sup> The case papers are put before the judge of the part handling each case for a warrant to be ordered. The warrant paperwork is done by CCO staff; in the Bronx, it is done by the cashier section.

Warrants are forwarded to the Police Department Warrant Division a day or two later. It is here that individual case-by-case enforcement collapses. Warrant Squad priority is based on the seriousness of the charges, regardless of stage of processing. Because Criminal Court fines are for misdemeanors and violations, these warrants are low priority and will often not be served. Many court staff seem totally unfamiliar with the Warrant Division procedures and policies, and believe the Police Department does nothing at all with these warrants. This is not the case, however; a letter is sent to the offender by the Warrant Division

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<sup>18</sup>An offender cannot be charged with bail or parole jumping at this stage. Section 520.20 (3) CPL exonerates bail when a case is terminated--termination being defined as sentence being imposed rather than fulfilling the sentence obligation.

whenever a bench warrant is issued.<sup>19</sup>

It should be noted that some offenders return to court voluntarily within a few days or weeks. The cashier or court part staff will pull the case papers and have the warrant vacated. The offender will be brought before the judge, who will give more time, impose the alternative jail time, or resentence. One judge said he is always surprised at how many return without a new arrest. He believes that this is due to the PD Warrant Squad telephoning the offender, who voluntarily surrenders, thereby precluding additional expenditure of resources by the PD. Another noted that "these people" are not responsible--they feel if they do not come in on the due date, it will not make any difference if they come in a few days or weeks later. Regardless of why he or she returns to court, if it is voluntary and within a short time, judges said they will often give more time if requested. Sometimes the adjournment is accompanied by a lecture or an inquiry as to whether the offender wants an indigency hearing. One respondent said that for trivial offenses, he keeps the offender in the courtroom for several hours to cool his or her heels, and then marks the case time served. Of course, if the offender comes in with the full payment at a late date, the money is accepted and there is no thought of imposing the jail alternative or resentencing.

A second possible outcome is that police officers will bring the offender in on an arrest for a new offense. A judge in the

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<sup>19</sup>See Part III, Section D below, for a discussion of the activities of the Warrant Division.

arraignment part will know from the rap sheet that there is an outstanding warrant for the defendant. Even for nonprintable offenses, a name check has been done against a warrant file, and thus warrants show up. The rap sheet will not specify the stage of unfingerprinted cases. A court part clerk or court officer will pull out the papers of the warrant cases to be presented to the judge at the same time as the new case.

Once the judge has determined that there is a fine due, he or she has several choices, the selection of which depends on the reason for default, the age of the old case, and the seriousness of the instant offense. The sanctions available are to execute sentence (i.e., impose the alternative jail time), or to resentence. The former option, which is commonly used, often results in someone coming to jail with the fine money within several hours or the next day, thus securing the offender's freedom. Of course, if the offender comes up with the money on the spot, no further action is taken.

A resentence will typically be used for two types of cases. If the offender has no money, the offense was not serious, or default may be explained at least in part by fear of being jailed for inability to pay, the judge will resentence to CD, time served, jail less than the originally stated alternative, or to a reduced fine amount corresponding to previous partial payment. Here the judge is reluctant to place an additional burden on the poorest offenders who cannot pay and are not serious criminals. Prior to imposing the new sentence, the judge may have suggested that the offender request an indigency hearing. Underlying this course are certainly the landmark Supreme Court cases and state statutes prohibiting imprisonment for nonpayment due to lack of

means when all other options have not been exhausted. For the most part, however, the judges interviewed did not introduce this into their discussions, possibly indicating that being practical and reasonable are foremost in their minds.

Similarly, and regardless of means, if an offender offers a good excuse for nonappearance or if there has been a long interval between the warrant and subsequent arrest, judges tend to be lenient, recognizing the offender's effort to stay out of trouble. A lecture and more time to pay are possible. The opposite approach is that if the offender did not bother to come in at all to say he or she cannot pay, then the right to an indigency hearing has been waived and the offender does not deserve to be accorded any consideration.

The offender will be resentenced to jail if the default is felt to be contumacious and the judge wants the offender to serve more than the original alternative time, or if the offender will probably be sentenced to jail for the new case. Time served may be used instead, especially if the offender is likely to be detained for not making bail on the new case. In sum, when there is a new arrest, the judge concentrates on that, often coordinating default sanctions with the new case.

Finally, no matter what the circumstances of default, probation will rarely be the resentence.

The CPL provides civil procedures for collection, but these are not used at all. It is thought to be impractical and costly to initiate a civil action for a low fine.

There is an interesting administrative detail regarding apprehended offenders who do want to pay an outstanding fine on which there is a warrant. Generally, warrants may be executed in



any county in the state but the judge must order bail or recognition and have the offender returned to the county where the warrant originated. Nevertheless, some Queens judges let offenders with out-of-county warrants pay their fines in Queens. Having completed the prosecution, the District Attorneys' Offices do not involve themselves with this aspect of sentencing. While this practice is not illegal, it is felt by some to be controversial. One Borough Chief Clerk felt that offenders against whom warrants are executed should be brought before the judge who issued it or at least another judge in that county. This expresses a traditional notion that a judge has a responsibility for his or her caseload and that it is not proper for another judge to alter judgments. Another Borough Chief Clerk, who likes the idea of a court taking fines for warrants from all counties, pointed out that it may take several hours for the court to acquire the details of the case from the original county, but it would take only an hour for the police to actually transport the offender to that county. A third Borough Chief Clerk remarked that Queens taking out-of-county fines complicates auditing. Records show it as a fine for the county where imposed, but the deposit is credited to Queens.

The problems and costs of administering fines was discussed during interviews with Criminal Court judges. Some judges pointed out that administration is easy only if the fines are paid. Furthermore, most judges perceived fine administration to be expensive, especially when warrants are issued. One pointed out that fines are cheap to the system only compared to jail and probation, while another said that fines cost the court more than jail or probation. Two respondents, who brought up the issue of revenue,

said that it is not the purpose of fines to produce revenue and that the cost of a sentence should not be a factor in the sentencing decision; that is, one does not think about the cost of housing inmates when imposing jail so one should not think about the cost of enforcement when imposing a fine.

Two suggestions were offered as methods of improving the payment rate. One was to mail notices for failure to appear (as the Criminal Justice Agency does for cases in earlier stages).<sup>20</sup> The other recommendation was to get as much information as possible about the defendant at the time of arrest, which would increase the chance of apprehension if a warrant is ordered.

#### D. PAYMENT RECORDS AND BANKING

In addition to fines, cashiers' offices collect cash bail, transcript fees, and subpoena fees.

The records are essentially identical in all counties due to city and state comptrollers' requirements. The case paper is the primary fine record for an individual offender and amounts received are stamped on its jacket by the cash register.

The cash registers produce a daily total tape for each session, separating city and state monies as well as arrest and summons cases, fees, and bail. The overall total should, of course, reflect the day's bank deposits. The tapes are bound and saved.

The cash books are the running log of monies accepted. Prior to April 1, 1981 one book was used for both city and state monies,

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<sup>20</sup>Judges and nonjudicial court personnel seem unaware of the Warrant Division's letters.

but there is now a separate book for each. The daily entries include total fines for day session, total fines for evening session and individual itemizations of cash bails and fees. (Because the cashiers' offices are closed at the end of day session, the books are brought to the night court clerks' offices for bail entries.) As notices of bad checks are received from the banks, these amounts are deducted. The daily totals are cumulated for the first fifteen days of each month and then for the last half of the month. Each book contains two carbon copies. One set of copies from the city book is sent to the city comptroller every fifteen days with a summary of receipts; one set from the state book is forwarded to the state comptroller when the books are closed at the end of the month. The second set of copies from each of the cash books go to the court's audit unit.

Upwards of six million dollars in fines and cash bail are handled by these offices annually. Almost half of this total is bail. Fees are negligible. In Manhattan, cashiers estimated that \$8,000 to \$10,000 was the daily take before summonses were added. The Bronx collects about \$20,000 weekly in fines, bail, and fees. The Kings supervisor indicated that \$80,000 to \$100,000 is collected monthly. The Queens cashiers collect \$3,000 to \$8,000 daily. This range is great and probably reflects an occasional very high bail. The amounts in the above four counties will have increased when all universal summonses were returnable in the counties. Richmond, which has two percent of the city's Criminal Court caseload, collects up to a thousand dollars daily, including bail, fees, and summons fines.<sup>21</sup>

One to three trips are made to the bank during the day session, and another deposit is made at the end of the night session in the four counties that have night court. The purpose of the first day trip to the bank is to count the money in the night drop bag and check the cash book entries. This is done by the supervisor of the cashiers' office. The trip may also entail depositing morning receipts. In the Bronx and Queens, only staff of the cashiers' office handle day deposits. In Manhattan, when there is a particularly large deposit, the supervisor calls the Captain of the Court officers, who sends two UCOs to go to the bank. Two UCOs make the one daily Kings deposit at the end of the session. A court clerk or UCO makes the Richmond deposits.

City monies are deposited into a checking account. Two checks are drawn daily against the previous day's deposits--one to the Commissioner of Finance for fines and fees and the other to the Director of Finance for cash bail. Vehicle and Traffic Law fines, which are state revenue,<sup>22</sup> are deposited into a savings account pursuant to an order by the state auditor so that interest can accrue. The money is withdrawn monthly and sent to the Commissioner of the Department of Taxation and Finance for the state.

Apparently, outside audits by state or city officers are infrequent.<sup>23</sup> The control function falls primarily on the court's

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<sup>21</sup>Even when summonses had been centralized, Richmond had been excluded, and summonses were returnable in the County's Criminal Court arrest parts.

<sup>22</sup>Researchers were told by court staff that these are state monies, and that some later get funneled back to the city.

<sup>23</sup>City auditors ceased activity on April 1, 1977 when the court became part of a statewide system.

audit unit, which aggregates various sources of funds on a monthly basis.

Researchers asked about opportunities for malfeasance. All respondents indicated that stealing is extremely rare. First, cashiers' units are small and usually there are no backup people used if someone is out ill or on vacation. Any inquiry would therefore be narrowly focused. Cashiers are not subject to any special screening before receiving these assignments. Having been observed in other parts of the court system, they are selected on the basis of being reliable and having meticulous work habits. Respondents also stressed that the record-keeping system provides adequate cross-checks.

The Bronx Borough Chief Clerk discussed the advantages and disadvantages of maintaining a separate fines calendar. On one hand, court part personnel are not given any opportunities to handle the money. On the other hand, the cashier's control of the calendar gives him or her an opportunity to make a fraudulent entry. As a precaution, a large sign is posted for the benefit of payers: "Please obtain receipt before leaving cashier." The cashier must ring up the transaction to produce a receipt.

#### E. STAFFING AND LOCATION OF CASHIERS' OFFICES

As mentioned above, cashiers' offices collect cash bail and fees as well as fines. Court costs are rarely used, but these, too, are paid here.<sup>24</sup> In the Bronx, warrant paperwork and record

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<sup>24</sup>There is no statutory authorization for court costs; therefore, most judges and clerks we interviewed believe it is illegal.

storage is an adjunct unit under the same supervisor.

The cashiers' offices are part of the Central Clerks' Offices (CCO), although in Manhattan, the Bronx, and Kings they are physically located elsewhere. It is worth noting the specific locations in the courthouses, for they suggest that the function of fines collection was not provided for in the design of the buildings, and because they may influence collection rates.

In all counties, cashiers' offices are open from 9:00 A.M. until the last day part, usually an arraignment part, closes. During night and weekend court, the part clerks' offices collect fines. Although fines are not meant to be returnable at night or on weekends, if someone comes in at those times, he or she can pay.

The number of cashiers' office personnel in each county varies, but not relative to the size of fine caseload. The range of duties differs. The table below shows by county the size of cashiers' office staff, total nonjudicial staff, annual fines collected for arrest cases, and approximate number of fines sentences imposed.

In each county, office staff is composed of some combination of the titles senior court clerk, court clerk, assistant court clerk, court assistant, and principal office assistant. It will be noted that there is no title "cashier." The job of collecting the money usually is done by persons in the middle-range titles of assistant court clerk and court assistant, while record-keeping, sending money to the City and State, and calling the banks regard-

ing checks are by higher titled staff. Supervision is by a court clerk or senior court clerk.

STAFFING OF CRIMINAL COURT CASHIERS' OFFICES,  
NEW YORK CITY, SPRING 1981

<u>COUNTY</u>	<u>PERSONNEL IN CASHIERS' OFFICE<sup>a</sup></u>	<u>TOTAL COUNTY NONJUDICIAL PERSONNEL</u>	<u>ESTIMATED ARREST CASE FINES COLL'D IN 1980<sup>b</sup></u>	<u>ESTIMATED FINE SENTENCES IMPOSED IN 1980<sup>c</sup></u>
New York	3	170	\$700,000	8,000
Bronx	5	135	430,000	5,600
Kings	3.5	140	420,000	5,700
Queens	2	135	480,000	6,700
Richmond	1	20	150,000	1,000
<b>TOTAL</b>	<b>14.5</b>	<b>600</b>	<b>\$2,180,000</b>	<b>27,000</b>

<sup>a</sup> Aggregated to account for persons who spend only part of their time on cashier duties. They handle summonses as well as arrest cases.

<sup>b</sup> Estimates based on monthly reports provided by the Office of Court Administration for New York City Courts.

<sup>c</sup> Applied percentage of Fines Project sample cases that were fines to total sentences reported on the OCA-NYC Comparative Statistical Profile for 1980.



### SECTION 3: FINES USE FOR SUMMONS CASES

#### A. INTRODUCTION

Widespread use of summonses instead of arrests was introduced in New York City in the 1950s. Summonses served the purpose of making fewer demands on the Police Department and it was predicted that they would generate a great deal of fine revenue.<sup>25</sup> The summons parts of the Criminal Court were established. The status quo held until 1970, but in the last eleven years there have been some significant changes in the system of adjudicating summonses.

Out of more than four million summonses issued annually,<sup>26</sup> about ninety-five percent were for traffic offenses. Since traffic violations could be enforced if tied in with the Department of Motor Vehicles, most were removed from the Criminal Court to regulatory agencies. In 1970, the City Council established the Parking Violations Bureau (PVB) and the Administrative Adjudication Bureau (AAB). The former gets all parking, the latter most motor vehicle moving violations. The Criminal Court summons caseload was reduced to about half a million following this change.

The third regulatory agency that drained off a great many cases from the Criminal Court is the Environmental Control Board. It was established in 1970 as the Department of Air Resources, dealing only with air pollution violations, but in the mid-1970s, the name was changed and gradually jurisdiction expanded to in-

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<sup>25</sup>Interviews with court officials who were employed in the courts at that time.

<sup>26</sup>For example, in 1966 there were 4.4 million issued. Criminal Court of the City of New York, Annual Report 1966.

clude noise, sanitation and peddling violations. This left the Criminal Court with 300,000 to 400,000 summonses annually by the beginning of the 1980s.

A budget crunch in the late seventies was the impetus for the first major change in the Criminal Court's administration of summonses. Until 1975, the summons parts in each county were housed in separate buildings from the arrest parts. These were costly to maintain, and at the end of that year the six summons parts of the four major counties were consolidated into four parts in New York County. Richmond County (Staten Island) had never had a separate summons part because the caseload was too small; those summonses were called in one of the two arrest parts. Richmond summonses were excluded from the consolidation because of the geographical distance and inconvenience for defendants to travel to New York County.

The second major change occurred in early 1981, when most of the centralized summons operations in New York County was shut down, and universal summonses were made returnable in the arrest parts of all County Criminal Courts.<sup>27</sup>

The most important fact about summonses relative to this study is that offenders are almost always fined. The other high-

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<sup>27</sup>Universal summonses are those issued by Police Officers and enforcement officers of other agencies. They are called "universals" because the court receives them centrally for record keeping; control numbers are issued chronologically broken down by county. Nonuniversal summonses arise out of civilian complaints that entail minor violations (e.g., a dispute between neighbors because one plays the radio too loudly). One part has remained at the central location in New York County, where efforts are made to mediate these disputes, but where cases can be put before a judge if mediation is rejected as an option or fails. The caseload of

light is that, by nature, some lend themselves to convenient enforcement strategies, while others are very difficult to enforce. This report will briefly treat the Criminal Court operation, the PVB, and the ECB. Treatment of the PVB and ECB is intended only as a brief examination of civil use of fines, and is based exclusively on limited interviews with these agencies' personnel.

#### B. CRIMINAL COURT SUMMONS CASES

In 1980, there were 342,897 summonses issued that were returnable in the New York City Criminal Court. Fewer than one-third were for traffic offenses, the most common of which is driving an uninsured vehicle. Almost one-quarter of a million summonses were for noncriminal violations of local laws and codes as well as noncriminal Penal Law (PL) violations. Based on researchers' court observations, the most frequent PL violation seems to be trespass, specifically for jumping the turnstile to avoid paying the subway fare. These are called "fare beats." A handful of PL misdemeanors which are criminal offenses also come through the summons parts; if the judge regards such a misdemeanor incident to be non-trivial, the case is transferred to the arrest parts. Thus the summons caseload consists primarily of trivial, noncriminal cases.

Universal summonses are returnable within thirty days. It is at this early stage that the system breaks down: in 1980, there were only 120,882 (35%) dispositions.<sup>28</sup> Due to limited Police De-

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nonuniversals is very small.

<sup>28</sup>Dispositions are not recorded until the sentence is ful-

partment resources, warrants are not even written for failure to come in by the return date because there is no chance that the defendant will be apprehended.<sup>29</sup> Even if issued, there would be a problem locating defendants who give bogus identification.

Most dispositions occur at the first and only appearance. Offenders who want to plead guilty to statutory fine amounts, which are written on the summonses, may go straight to a cashier, bypassing the courtroom. The others who want to plead guilty or contest go to the courtroom. There are no defense lawyers, and prosecutors (from the District Attorney's Office for PL cases and the City's Corporation Counsel for other charges) usually do not participate.

Only 2% (2944) of Criminal Court summons cases were disposed by trial. Thirty-five percent (42,675) were dismissed, 61% (74,063) pleaded guilty, and the balance were transferred to the arrest parts.

For most charges other than PL and Vehicle and Traffic law violations, the fine is the only authorized sentence. In 1980, there were 64,345 (85%) fines paid out of the 75,567 sentences. Of the rest, 9% were unconditional discharge, 5% were conditional discharge, and half of one percent were sentenced to jail terms (none of which exceeded thirty days). It is clear that the fine is by far the sanction of choice for summons cases.

The 64,345 fines paid generated \$1,294,985. The mean fine was \$20.13. Vera researchers observing courtroom activities noted

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filled (i.e., until the fine is paid).

<sup>29</sup>Refer to Part III-D below regarding Warrant Division

a great number of very low fines--five and ten dollars. This mean figure probably reflects a majority of fines in lower amounts but a few that were substantially higher, thus skewing the distribution. These higher fines are common for business offenders for offenses such as building violations, which are detected by Fire Department inspectors. Unfortunately, no hard data are available.<sup>30</sup> Almost all of the revenue went to the City. New York State received about \$175,000 for Vehicle and Traffic law offenses.<sup>31</sup>

It is not known how many persons are sentenced to a fine but fail to return to pay. Due to the low amounts and defendants knowing they will probably be fined, most come to court with enough money to pay at once. Of the ten thousand summons-part warrants issued annually that are not returned, only an unknown part are for default. The others are for defendants who have come to court at least once on the summons, but failed to return for trial. So the revenue lost due to fine default is probably around \$100,000.<sup>32</sup> However, there is a potential of perhaps two to three million dollars in fines for defendants who never came to court at all. However, it might well cost several times that amount to go

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priorities and operations.

<sup>30</sup>The revenue generated by nonuniversal summonses is undoubtedly negligible due to the tiny caseload. No figures are available.

<sup>31</sup>Some of this will be forwarded to the City at a later time. See discussion of Fiscal Agencies in Part III-F below.

<sup>32</sup>This projection is based on an arbitrary guess that half of the warrants are for fine defaults with a mean fine amount of twenty dollars.

after all of these people, who represented 222,015 summonses in 1980. The Police Department Warrant Division does not send form letters to them because warrants are never prepared. It seems that the court, which has looked to summons operations when economizing, is unlikely to engage in the practice of sending letters.<sup>33</sup> Indeed, the Criminal Court does not even send letters for failure to appear on arrest cases. It is the Court's attitude that once a warrant is issued, the case is out of their hands and under Police Department jurisdiction.

### C. PARKING VIOLATIONS BUREAU

According to interviews with Parking Violations Bureau staff, the PVB was established in 1970 with two mandates: to provide a forum for hearings on contested parking summonses and to enforce judgments on defaults.

There were ten million parking tickets written in 1980. Fine amounts range from ten to fifty dollars. The amount is marked on the ticket, so the recipient can check off a box to plead guilty and mail in the amount due. PVB estimates that one-quarter of the tickets are mailed in using the check-off box on the ticket.

Persons with parking tickets may also come to a hearing of-  
fice within seven days. When the PVB has not heard from a defen-  
dant by the seventh day, the defendant is liable for a default  
judgment and the late penalty. Penalties range from five to

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<sup>33</sup>The Executive Officer of the Warrant Division believes that the letters they do send to summons defendants bring about forty percent in to court. Term statistics compiled by the Office of Court Administration for New York City Courts indicate a voluntary return rate of one half.

twenty-five dollars. The amount is determined by the fine amount and number of days late. Penalties are structured so that the fine plus penalty will be less than or equal to fifty dollars, which is the maximum fine.

In 1980, there were 560,000 hearings before Administrative Law Judges in borough offices. These represented forty percent of all summonses. The discrepancy between four million tickets and half a million hearings is explained by many persons receiving several tickets and clearing them up in a batch, especially as the time to renew the vehicle registration approaches. Some of these were dismissed at the hearing, for example, if the car had been stolen and parked illegally, or if the defendant could prove the car was legally parked. The Administrative Law Judges are willing to negotiate a reduced amount to cover the several summonses and are also often willing to waive or reduce late penalties when defendants have good excuses and appear anxious to make good on fines due. The objective is to get at least some money and close the case.

The thirty-five percent balance of tickets were issued to scofflaws, of whom more than half eventually pay, leaving ten to fifteen percent to be written off.<sup>34</sup>

When one has failed to mail in the fine or come to a hearing office by day seven, the following procedures ensue, according to

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<sup>34</sup>This percentage is much lower than the dollar amount written off as a percentage of total potential dollars. The reasons are that the amount collected includes many reduced fines, while the amount uncollected reflects the fifty dollar maximums, which include penalties.

PVB staff. The first notice of the outstanding summons impending default judgment, a computer-generated letter, goes out on day twenty. The defendant has thirty days to respond. On the seventy-fifth day, the default judgment is rendered, and on day ninety, PVB sends another computer-generated letter notifying the defendant that assets may be seized and auto registration restrained. Up to day ninety, persons may come in to a hearing office. Although the Administrative Law Judges are often willing to allow a reduced amount to clear all outstanding tickets, they do not accord leniency to hardcore offenders who have accumulated hundreds of tickets.

After this three-month period, the PVB takes two steps to enforce the open judgment, according to PVB staff. If an individual has three or more unpaid summonses that were issued in an eighteen-month period, the PVB certifies that fact to the Commissioner of Motor Vehicles, who will defer the next registration renewal until the fines are paid. The respondent (offender) is notified at the same time and again three months before the registration expiration date. Many pay at this point but many others hold off until a few days before the expiration (the last day of the month). During the last week of each month, half a million dollars is received just from persons who want to renew their registrations.

The second step, according to PVB staff, is to turn the case over to one of the dozen collection agencies PVB has contracts with. If letters and phone calls are not successful, an agency gets PVB's approval to execute the judgment (i.e., to assign the case to marshall who can seize the car or other assets, garnish the respondent's salary, and distrain the respondent's bank ac-



counts). These activities are governed by the New York State Civil Practice Rules.

Collection agencies are paid contingency fees. PVB staff report some concern about agencies using heavy-handed tactics, and when an offender makes a substantiated complaint that indicates noncompliance with the contract, PVB fines the agency. Apparently, according to PVB staff, collection agencies readily pay these fines--they want the PVB business.

#### D. ENVIRONMENTAL CONTROL BOARD

The Environmental Control Board is the adjudication and collection arm of the Department of Environmental Protection. According to ECB staff, its caseload dramatically increased to 400,000 violations in fiscal year 1981, by which time the transfer of sanitation cases from the Criminal Court summons parts to the ECB was completed.

This operation is different from the Parking Violations Bureau: the caseload is diversified and some cases are quite technical; the caseload is much lower; Administrative Law Judges will not negotiate reduced fines; and some cases do not lend themselves to convenient enforcement mechanisms. The outstanding common factor is that the sole penalty is monetary.

In fiscal year 1981, there were 265,000 sanitation cases, 40,000 peddling cases, and over 50,000 air violations. Sanitation cases include such things as littering, uncovered receptacles dumping, not cleaning street in front of premises, and not picking up dog feces. The case volume is high because the Department of Sanitation is the only agency to have its own full-time police who issue violations.

The various laws and codes each have their own fine structures. Sanitation and Health Code fines have minima and maxima. There are maxima only for air pollution violations. Amounts are fixed for each type of peddling offense, with incremental amounts for recidivists. Typical fines levied are near the minimum and range from ten to one hundred dollars.

On most violations, a fine amount is indicated, and the defendant can check off a box to plead guilty and pay. These amounts, however, are for some cases only the amount recommended by the issuing officer who witnessed the violations and based the assessment on the particular circumstances. An ECB official said that many offenders choose to mail in the amount shown on citation. Anyone wishing a hearing before an Administrative Law Judge must go to the central Manhattan office that serves the whole city. Sixteen percent of the cases are adjudicated at a hearing. The disposition of the entire caseload is: 48% paid in full, 6% dismissed, 8% issued against government facilities (therefore ECB cannot legally collect), 8% entail questions about whether citation was served correctly, and 30% pose nonappearance and default problems.

After failure to appear at a hearing (or mail in the fine), three reminder and warning notices are generated by the computer over the next two months. If the defendant has still not come in, the case is in default and judgment against the violater is entered. The crucial fact about default is that the fine due is automatically increased to the maximum authorized. Sixty to ninety days after the failure to appear, the case is turned over to a collection agency. Collection agencies use the same methods for ECB judgments as for PVB judgments.

Some of the ECB cases are tied into licensing systems, which are not always effective mechanisms to foster fine payment and compliance with air standards. For street vendors who are licensed, the threat of losing that license or not being allowed to renew it may elicit payment. But many vendors are unlicensed and provide phone identification, so that there is no threat of withholding the license and a collection agency will not be able to locate the violator. Air pollution violations are more complex. For both nonpayment and noncompliance with standards set by the Department of Environmental Protection, an operation may be shut down. Depending on the type of building, the ECB may or may not go in and shut off a furnace. For instance, in an apartment building, the ECB cannot deprive tenants of heat and hot water.

The ECB differs from the PVB in that there is heavy reliance on monetary punishment for lateness vis-a-vis raising default amounts to maxima and not allowing reductions.

#### E. SUMMARY

The use of summonses for violations of many codes and laws is widespread in New York City. In the last several years, cases that lend themselves readily to enforcement have been removed from the Criminal Court and are now treated civilly. Whether or not sentencing is limited to fines by statute, fines are almost exclusively used.

When fine amounts are statutory, defendants have the option of conveniently mailing in the fine without appearing for adjudication.

Fine amounts imposed are usually low. The adjudicatory body is not often faced with the problem of violators who are indigent,

as is the case in criminal cases. Recipients of summonses in New York City tend to be at least working class persons (after all, motor vehicle offenders own cars), and some are businesses or corporations. When default occurs, it is likely to be willful.

Unlike arrest cases, the great problem with summons defendants is getting them to respond at all. Success in enforcing summonses is based on availability of sanctions that are feasible to levy. Motor-vehicle offenders are more likely to respond because the state will disallow renewal of licenses and registrations.

When the threat of jail is precluded by statute, collection agencies are turned to. Their success is not guaranteed because many respondents cannot be located, but the burden is removed from the criminal justice system.

SECTION 4: QUANTITATIVE ANALYSIS OF SAMPLE SENTENCESA. METHODOLOGY

To examine how fines are used in the New York City Criminal Court and how they are enforced, the sample was drawn for quantitative analysis that included all Criminal Court sentences imposed during the week of October 22 to 28, 1979; this excluded summons part cases. This period was far enough in the past to allow a one-year follow up for the purpose of examining collection success. Considerations made in selecting the week were that it should not be during the summer or in December (when court activities slow down), there should be no holidays, and there should not normally be extreme weather.

This sample yielded 1945 sentences, of which 601 (30.9%), were fines. It had been anticipated that the sample would contain about 800 fines, based on the court's sentence breakdown for 1977,<sup>35</sup> the most recent year for which such data are available. The use of fines has apparently dropped and use of time served increased since then.

Three sources of raw data were used. First, the New York State Office of Court Administration (OCA) approved our receiving the court records. Meditech, OCA's software supplier, wrote a program that printed a separate court record for each offender sentenced in the sample week. Then the criminal histories for all offenders in the sample were provided by the Identification Unit

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<sup>35</sup>Office of Court Administration for New York City Courts, Filings, Dispositions and Sentences by Charge: January-June 1977, and July-December 1977 (for Criminal Court of the City of New York).

of the New York City Police Department. Finally, employment information when available was obtained from the Criminal Justice Agency.

In order to be sure that Meditech supplied a complete sample, a Vera analyst checked term summaries of daily court activities. For each county, sentences in all parts were added up for October 22 to 28, 1979. Both sets of figures were very close and we are confident that the sample is complete.

The sample excludes sealed cases. Only offenders adjudicated Youthful Offender fall into this category. Meditech supplied 71 blank records representing the sealed cases; this is 3.5% of the total week's sentences (2016). No information was provided on these cases that could be used for analysis.<sup>36</sup>

Although the sentence sample is complete for all public records, rap sheets were not obtained for 218 cases. Some of these persons were not fingerprinted for the instant offense and had no criminal histories, therefore they were never on file with the New York State Identification Division (NYSID). Fingerprints are not required for many violations and non-Penal Law offenses (Section 160.10 Criminal Procedure Law). For other cases, there were discrepancies in names and state identification numbers between the court and the NYSID records, so it was impossible to link up the correct rap sheet. Notwithstanding this problem, the criminal history information is quite complete.

There were a great many problems trying to get employment information. The Criminal Justice Agency, which interviews defen-

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<sup>36</sup>Three and a half percent appears to be an accurate figure. According to OCA's sentence breakdown for Criminal Court for the second half of 1977, 2.5% (1406) were Youthful Offenders.

dants before arraignment in order to make release recommendations, records employment and school status at the interviews. Unfortunately, the documents for 1979 had been destroyed except in Kings County, which still had documents from a month before our sample week. About 150 records were available. CJA also supplied a printout resulting from a special study of all persons interviewed in the first week of October 1979. Only fifty-three of our sample's sentences were on this listing. Consequently, employment data are too scanty to be of any use except for Kings County.

The coding sheet and coding guide used are Appendices I-D and I-E.

In addition to the issue of sealed cases, users of the statistics herein should note characteristics specific to frequently mentioned variables. These details will be indicated in the text as needed.

A case is based on docket number because offenders are liable for each docket. There were only 18 dockets that represented second and third numbers per person arising from the same incident. Usually when there are multiple dockets, the defendant pleads guilty to one and others are dismissed. Another situation was a handful of offenders sentenced for independent incidents during the sample week, and possibly on the same day. No attempt was made to link up these cases. (Treating them as separate cases is a standard approach.) Therefore, a case is strictly interpreted as a docket number, but because dockets and individuals are nearly identical, cases may also be thought of as individuals.<sup>37</sup>

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<sup>37</sup>The difference between docket numbers and offenders is less than one percent.

Age refers to age on arrest date. Counsel refers to type of counsel at disposition. Many dispositions were at arraignment, and it is conceivable that had some cases been adjourned, the defendant would have been told to retain counsel. But there are pressures to move the calendar, and it is expedient for a Legal Aid lawyer representing a nonindigent for the purpose of arraignment to go along with a disposition.

Analyzing charges is a complex task. There are about 250 Penal Law statutes and several non-Penal Law offenses. Therefore, charges were coded by type--for instance, theft related and gambling. Since the statutes would have eventually had to be grouped for analysis, a shortcut was taken by doing it at the coding stage. Findings presented in the earlier sections of this report--especially the judges' interviews--suggest that the nature of the offense is more important than the offense category. Disposition charges were only misdemeanors and violations. Theft, assault, and gambling statutes are misdemeanors only. Disorderly conduct and loitering are all violations.

When there were multiple arraignment charges, the top charge was selected. If there were two or more in the top category, the approach was to use the charge that best described the incident in an overall sense. For example, if there were class A misdemeanors assault and possession of a weapon, the assault charge was used; if there was petit larceny and possession of stolen property, the former charge was selected.

Minor grouping was done of the several sentence options. The 601 fines include 5 used with probation and 51 with conditional



discharge. When the fine-only sentence is discussed, it will be referred to as such. The 344 jail cases include 5 "shock probation" (60 days in jail and 34 months of probation) and 4 intermittent imprisonment (weekends only).

Time served refers to the offender being sentenced to previously served time, often the period spent in detention from arrest to disposition for inability to make bail. The detention may start later due to return upon issuance of a bench warrant with bail being set to ensure subsequent appearance. Most of the time, however, it is simply the day or so from arrest to arraignment, with the disposition and sentence at that first court appearance.

Fine amount is the amount set in the sample week. This is to be distinguished from higher amounts previously set but reduced in the sample week, and from future reductions of amounts imposed in that week.

Probation is three years for class A misdemeanors and one year for class B. It is not authorized for violations.

Warrants always refer to bench warrants for failure to appear on scheduled court dates. In the context of this study, non-appearance is limited to scheduled fine payment dates after the sentence was imposed.

Criminal histories are not limited to New York State arrests. Out-of-state arrests are on the rap sheets if they are known to NYSID and these were used in our data. Dispositions are not shown for all cases. Therefore the number of previous convictions will be understated.<sup>38</sup> (It is not grossly incomplete, however.) Pleas

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<sup>38</sup>The vast majority of convictions were by plea rather than trial.

on the sentence date to cases other than the instant offense were not included as prior convictions--it is likely that they were part of a whole plea package encompassing the old and the instant cases. Some previous arrests were disposed after the sample week and those convictions were excluded. When the conviction charge was not specified, the coder could figure out whether it was a felony or misdemeanor by the sentence, for example, the length of incarceration term or probation. Few family court findings are on the rap sheets, so juvenile criminal history was not included. Subsequent arrests were limited to the year following the sample week. Offenders may not have been at risk for that entire period due to incarceration on the sample case or any other case.

The final point relative to criminal histories is to repeat that sealed cases are not shown. Youthful Offenders and many dismissals (especially more recent cases from when the law was changed regarding sealing) would be sealed.

The precise grouping of many of the variables was determined after inspection of complete frequency distributions. This avoided loss of major categories that could not be predetermined.

All data in this section are from the sample unless otherwise specified. Statistics will be for total city activity unless noted.

#### B. SELECTION OF THE FINE

Before concentrating on the fines cases, data will be presented regarding the use of fines in the context of all sentence options.

The fine was used for 30.9% (601) of the sample of sentenced cases. It was the most frequently used sentence, followed by con-

ditional discharge--23.5% (458), time served--19.8% (386), jail--17.7% (344),<sup>39</sup> probation--5.1% (100), and unconditional discharge--2.9% (56). Most practitioners in the New York City Criminal Court see the fine, probation, and jail as the only real sanctions levied. Thus almost half of the sentences are not "punitive," that is, they are conditional and unconditional discharges and time served. Table 1 presents a complete sentence breakdown by county. It will be noted that half of the sentences citywide were in New York County, over one-fifth in Kings, one-seventh in the Bronx and Queens, and 3% in Richmond.

The sentence distributions vary among the counties. Fines are used less frequently in New York and Kings. In New York, time served comprises 37.6% (347) of the sentences. Two-thirds of these sentences were for prostitution-related offenses (prostitution, patronizing, and promoting). If the 226 prostitution-related offenders who received time served were removed, the percentage of fines would be 27.7%. The other common offenses for which time served is used are disorderly conduct and loitering. In Kings, conditional discharge is favored, half of them being for disorderly conduct and loitering please. Tables 2 through 7 are sentence breakdowns by conviction charge type for the city and the five counties.

In New York County, use of sentences that are more lenient than fines appears related to the non-serious nature of the cases.

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<sup>39</sup>Maximum authorized jail term is one year.

Table 1

## SENTENCES BY COUNTY FOR TOTAL SAMPLE

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

Table 2

SENTENCES BY CONVICTION CHARGE TYPE,  
CITYWIDE SAMPLE

CONVICTION CHARGE TYPE	FINE ONLY		FINE AND C.D., PROB.		JAIL		PROBATION		TIME SERVED		COND. DISCHARGE		UNCOND. DISCHARGE		TOTAL	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Theft-related	61	15.1	2	0.5	177	43.9	46	11.4	25	6.2	88	21.8	4	1.0	403	99.9%
Assault	10	19.2	4	7.7	15	28.8	10	19.2	3	5.8	10	19.2	-	-0-	52	99.9%
Prostitution-related	64	19.9	-	-0-	17	5.3	-	-0-	235	73.2	5	1.6	-	-0-	321	100.0%
Gambling	55	65.5	-	-0-	16	19.0	-	-0-	5	6.0	8	9.5	-	-0-	84	100.0%
Dis. Con., Loitering	179	35.4	21	4.2	19	3.8	-	-0-	60	11.9	197	39.0	29	5.7	505	100.0%
Trespass	22	12.9	2	1.2	47	27.6	14	8.2	22	12.9	52	30.6	11	6.5	170	99.9%
Drugs	50	34.0	8	5.4	20	13.6	8	5.4	20	13.6	35	23.8	6	4.1	147	99.9%
Motor Vehicle	80	63.0	12	9.4	1	0.8	-	-0-	-	-0-	32	25.2	2	1.6	127	100.0%
Other	24	17.9	7	5.2	31	23.1	22	16.4	16	11.9	30	22.4	4	3.0	134	99.9%
TOTAL	545	28.0	56	2.9	343	17.7	100	5.1	386	19.9	457	23.5	56	2.9	1943	100.0%

NOTE. Two cases were missing charge type.

Table 3  
 SENTENCES BY CONVICTION CHARGE TYPE,  
 NEW YORK COUNTY SAMPLE

CONVICTION CHARGE TYPE	FINE ONLY		FINE AND C.D./ PROB.		JAIL		PROBATION		TIME SERVED		COND. DISCHARGE		UNCOND. DISCHARGE		TOTAL	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Theft-related	41	21.9	-	-0-	75	40.1	9	4.8	22	11.8	39	20.9	1	0.5	187	100.0%
Assault	7	33.3	-	-0-	3	14.3	5	23.8	3	14.3	3	14.3	-	-0-	21	100.0%
Prostitution-related	37	13.9	-	-0-	3	1.1	-	-0-	226	84.6	1	0.4	-	-0-	267	100.0%
Gambling	33	53.2	-	-0-	16	25.8	-	-0-	5	8.1	8	12.9	-	-0-	62	100.0%
Dis. Con., Loitering	29	18.4	-	-0-	2	1.3	-	-0-	46	29.1	60	38.0	21	13.3	158	100.1%
Trepass	2	3.4	-	-0-	14	23.7	1	1.7	11	18.6	22	37.3	9	15.3	59	100.0%
Drugs	20	20.4	3	3.1	18	18.4	6	6.1	19	19.4	27	27.6	5	5.1	98	100.1%
Motor Vehicle	12	60.0	-	-0-	-	-0-	-	-0-	-	-0-	8	40.0	-	-0-	20	100.0%
Other	7	14.0	2	4.0	12	24.0	3	6.0	15	30.0	8	16.0	3	6.0	50	100.0%
TOTAL	188	20.4	5	0.5	143	15.5	24	2.6	347	37.6	176	19.1	39	4.2	922	99.9%

NOTE. One case was missing charge type.

Table 4  
SENTENCES BY CONVICTION CHARGE TYPE,  
BRONX COUNTY SAMPLE

CONVICTION CHARGE TYPE	FINE ONLY		FINE AND C.D., PROB.		JAIL		PROBATION		TIME SERVED		COND. DISCHARGE		UNCOND. DISCHARGE		TOTAL	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Theft-related	5	11.1	-	-0-	16	35.6	10	22.2	1	2.2	13	28.9	-	-0-	45	100.0%
Assault	1	8.3	2	16.7	4	33.3	4	33.3	-	-0-	1	8.3	-	-0-	12	99.9%
Prostitution-related	13	86.7	-	-0-	-	-0-	-	-0-	1	6.7	1	6.7	-	-0-	15	100.1%
Gambling	10	100.0	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	10	100.0%
Dis. Con., Loitering	44	49.4	1	1.1	1	1.1	-	-0-	9	10.1	34	38.2	-	-0-	89	99.9%
Trespass	6	18.8	-	-0-	9	28.1	2	6.3	6	18.8	9	28.1	-	-0-	32	100.1%
Drugs	12	80.0	-	-0-	-	-0-	-	-0-	-	-0-	3	20.0	-	-0-	15	100.0%
Motor Vehicle	13	56.5	1	4.3	1	4.3	-	-0-	-	-0-	8	34.8	-	-0-	23	99.9%
Other	11	36.7	2	6.7	5	16.7	8	26.7	-	-0-	4	13.3	-	-0-	30	100.1%
TOTAL	115	42.4	6	2.2	36	13.3	24	8.9	17	6.3	73	26.9	-	-0-	271	100.0%

NOTE. One case was missing charge type.

Table 5  
SENTENCES BY CONVICTION CHARGE TYPE,

KINGS COUNTY SAMPLE

CONVICTION CHARGE TYPE	FINE ONLY		FINE AND C.D., PROB.		JAIL		PROBATION		TIME SERVED		COND. DISCHARGE		UNCOND. DISCHARGE		TOTAL	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Theft-related	6	6.3	1	1.1	36	37.9	21	22.1	1	1.1	28	29.5	2	2.1	95	100.1%
Assault	1	8.3	-	-0-	6	50.0	1	8.3	-	-0-	4	33.3	-	-0-	12	99.9%
Prostitution-related	14	35.9	-	-0-	14	35.9	-	-0-	8	20.5	3	7.7	-	-0-	39	100.0%
Gambling	10	100.0	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	10	100.0%
Dis., Con., Loitering	37	29.8	3	2.4	10	8.1	-	-0-	2	1.6	68	54.8	4	3.2	124	99.9%
Trespass	9	16.7	1	1.9	16	29.6	8	14.8	2	3.7	17	31.5	1	1.9	54	100.1%
Drugs	3	23.1	4	30.8	-	-0-	2	15.4	-	-0-	4	30.8	-	-0-	13	100.1%
Motor Vehicle	26	68.4	3	7.9	-	-0-	-	-0-	-	-0-	8	21.1	1	2.6	38	100.0%
Other	2	5.3	3	7.9	9	23.7	9	23.7	-	-0-	14	36.8	1	2.6	38	100.0%
TOTAL	108	25.5	15	3.5	91	21.5	41	9.7	13	3.1	146	34.5	9	2.1	423	99.9%



Table 6

SENTENCES BY CONVICTION CHARGE TYPE,

QUEENS COUNTY SAMPLE

CONVICTION CHARGE TYPE	FINE ONLY		FINE AND C.D., PROB.		JAIL		PROBATION		TIME SERVED		COND. DISCHARGE		UNCOND. DISCHARGE		TOTAL	
	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$
Theft-related	7	11.9	1	1.7	37	62.7	6	10.2	1	1.7	6	10.2	1	1.7	59	100.1%
Assault	1	20.0	2	40.0	2	40.0	-	-0-	-	-0-	-	-0-	-	-0-	5	100.0%
Prostitution-related	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-
Gambling	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-
Dis. Con., Loitering	54	46.6	16	13.8	5	4.3	-	-0-	3	2.6	34	29.3	4	3.4	116	100.0%
Trespass	4	20.0	-	-0-	6	30.0	3	15.0	3	15.0	3	15.0	1	5.0	20	100.0%
Drugs	15	75.0	1	5.0	1	5.0	-	-0-	1	5.0	1	5.0	1	5.0	20	100.0%
Motor Vehicle	26	65.0	5	12.5	-	-0-	-	-0-	-	-0-	8	20.0	1	2.5	40	100.0%
Other	4	30.8	-	-0-	3	23.1	2	15.4	1	7.7	3	23.1	-	-0-	13	100.1%
<b>TOTAL</b>	<b>111</b>	<b>40.7</b>	<b>25</b>	<b>9.2</b>	<b>54</b>	<b>19.8</b>	<b>11</b>	<b>4.0</b>	<b>9</b>	<b>3.3</b>	<b>55</b>	<b>20.1</b>	<b>8</b>	<b>2.9</b>	<b>273</b>	<b>100.0%</b>

Table 7  
SENTENCES BY CONVICTION CHARGE TYPE,

RICHMOND COUNTY SAMPLE

CONVICTION CHARGE TYPE	FINE ONLY		FINE AND C.D., PROB.		JAIL		PROBATION		TIME SERVED		COND. DISCHARGE		UNCOND. DISCHARGE		TOTAL	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Theft-related	2	11.8	-	-0-	13	76.5	-	-0-	-	-0-	2	11.8	-	-0-	17	100.1%
Assault	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	2	100.0	-	-0-	2	100.0%
Prostitution-related	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-
Gambling	2	100.0	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	2	100.0%
Dis. Con., Loitering	15	83.3	1	5.6	1	5.6	-	-0-	-	-0-	1	5.6	-	-0-	18	100.1%
Trespass	1	20.0	1	20.0	2	40.0	-	-0-	-	-0-	1	20.0	-	-0-	5	100.0%
Drugs	-	-0-	-	-0-	1	100.0	-	-0-	-	-0-	-	-0-	-	-0-	1	100.0%
Motor Vehicle	3	50.0	3	50.0	-	-0-	-	-0-	-	-0-	-	-0-	-	-0-	6	100.0%
Other	-	-0-	-	-0-	2	66.7	-	-0-	-	-0-	1	33.3	-	-0-	3	100.0%
TOTAL	23	42.6	5	9.3	19	35.2	-	-0-	-	-0-	7	13.0	-	-0-	54	100.1%

The seriousness of the cases is best evaluated by inspecting offense categories of arraignment and conviction charges as well as the number of counts reduced. In New York, 12.9% (119) of the arraignment charges were felonies, while there were 46.5% (126) in the Bronx, 51.3% (216) in Kings, 31.3% (85) in Queens, and 29.6% (16) in Richmond. (See Table 8 for distribution of conviction charges.) Well over half of the New York County conviction charges were not reductions. These patterns put the New York County initial "leniency" in perspective.

In Kings where fines use is also relatively low, high use of conditional discharge is only a partial explanation. Kings has the highest percentage of felony arraignment charges, although it also has more reductions by three and four counts than any other county. It is therefore not surprising that jail and probation are relatively high. Perhaps equivalent cases in other counties are held for a grand jury instead. Or possibly the District Attorney's Office draws up complaints with charges that are too high, but this is unlikely because judges apparently consider these charges serious enough to warrant jail.

Disorderly conduct is the most common charge for which fines are used--one-third of the fines were for this charge. But because of the great variation in frequency of each conviction charge, it makes more sense to look at the charges individually. Citywide, fines are strongly favored for gambling and motor vehicle offenses. Fines are used for 40% of drug charges and disorderly conduct. Fewer than one-fifth of theft-related offenses, assault, prostitution-related, and trespass cases result in fines.

The distribution of conviction charge types is very similar in all counties except New York. The rank order of each charge

Table 8

SERIOUSNESS OF ARRAIGNMENT AND CONVICTION CHARGES OF  
SAMPLE CASES BY COUNTY

<u>CHARGE CLASS</u>	<u>NEW YORK</u>	<u>BRONX</u>	<u>KINGS</u>	<u>QUEENS</u>	<u>RICHMOND</u>	<u>CITY</u>
<b>Arraignment:</b>						
Violation	4.9%	7.0%	11.2%	13.6%	3.7%	7.7%
B Misdemeanor	30.2	5.5	3.6	3.7	1.9	16.5
A Misdemeanor	49.7	33.6	26.8	44.1	55.6	41.9
Unclassified Misd.	2.3	7.4	7.1	7.4	9.3	4.9
Felony	<u>12.9</u>	<u>46.5</u>	<u>51.3</u>	<u>31.3</u>	<u>29.6</u>	<u>29.0</u>
	100.0%	100.0%	100.0%	100.1%	100.1%	100.0%
	N= 923	N= 271	N= 421	N= 272	N= 54	N= 1941
<b>Conviction:</b>						
Violation	24.4%	50.2%	48.2%	56.8%	46.3%	38.3%
B Misdemeanor	39.6	14.0	22.9	20.1	24.1	29.2
A Misdemeanor	34.9	33.2	26.0	19.4	27.8	30.4
Unclassified Misd.	<u>1.1</u>	<u>2.6</u>	<u>2.8</u>	<u>3.7</u>	<u>1.9</u>	<u>2.1</u>
	100.0%	100.0%	99.9%	100.0%	100.1%	100.0%
	N= 922	N= 271	N= 423	N= 273	N= 54	N= 1943
<b>Cases for which charges were not reduced</b>						
	58.1%	17.8%	21.9%	17.6%	22.2%	37.9%

may be compared by inspecting the total columns tables 3 to 7. Disorderly conduct is most common, followed by theft-related charges (including, for example, possession of stolen property). Assault, prostitution, and gambling have the lowest ranks. Drugs, trespass, and motor-vehicle offenses are of moderate frequency.

It is of interest to compare the counties with regard to the percentages of each conviction offense that receive fine sentences. (See Table 9.) There is fairly consistent fines use for theft-related charges. Disparity in fines for assault may be due in part to the small number of cases. New York prostitution offenders rarely get fined because more lenient treatment is felt appropriate inasmuch as prostitutes are regarded by many judges as societal victims. Although the actual number of prostitution offenders in the Bronx and Kings are small, fines are almost always imposed in the former, while only in one-third of the Kings cases. Gamblers are always fined except in New York County, where one-quarter get jail. The harsh treatment of street gamblers compared with prostitutes may reflect the mercenary nature of the former, while prostitutes tend to turn their earnings over to their pimps.

For drug charges, fines are uncommon in New York County, while used in four-fifths of the Bronx and Queens cases. Yet the high volume of drug charges in New York is not simply smoking marijuana cigarettes on the street, for which jail is not authorized at all (these usually result in summonses). The most frequent drug charge citywide is possession of a controlled substance in the seventh degree, a class A misdemeanor. Judges apparently prefer jail for the more serious cases.

There is tremendous variation in fines use for disorderly conduct and loitering, which are the most common conviction pleas

Table 9

PERCENTAGE OF SAMPLE SENTENCES THAT ARE FINES  
FOR EACH CONVICTION CHARGE TYPE BY COUNTY

<u>CONVICTION CHARGE TYPE</u>	<u>NEW YORK</u>	<u>BRONX</u>	<u>KINGS</u>	<u>QUEENS</u>	<u>RICHMOND</u>	<u>CITY</u>
Theft-related	21.9%	11.1%	7.4%	13.6%	11.8%	15.6%
Assault	33.3%	25.0%	8.3%	60.0%	-0-	26.9%
Prostitution-related	13.9%	86.7%	35.9%	-0-	-0-	19.9%
Gambling	53.2%	100.0%	100.0%	-0-	100.0%	65.5%
Dis. Con., Loitering	18.4%	50.5%	32.2%	60.4%	88.9%	39.6%
Trespass	3.4%	18.8%	18.6%	20.0%	40.0%	14.1%
Drugs	23.5%	80.0%	53.9%	80.0%	-0-	39.4%
Motor Vehicle	60.0%	60.8%	76.3%	77.5%	100.0%	72.4%
Other	18.0%	43.4%	13.2%	30.8%	-0-	23.1%
TOTAL	20.9%	44.6%	29.0%	49.9%	51.9%	30.9%
	N= 193	N= 121	N= 123	N= 136	N= 28	N= 599

NOTE. Two cases were missing charge type.

outside of New York County. It is worth looking closely at this particular charge because comparison is not hampered by a small sample. In New York 18.4% (20) resulted in fines, in the Bronx--90.5% (45), in Kings--32.2% (40), in Queens--60.4% (70), and in Richmond--88.9% (16).

In sum, differences in fines use in the counties is compounded by disparate treatment for various types of conviction charges. Offender characteristics do not explain the differences. In fact, sex, age, and criminal history are closely tied to offenses.

Ten to 15% of the sentenced offenders in the Bronx, Kings and Queens samples were female. In Richmond, there was only one woman out of the 54 cases. In New York County, most of the 31.9% (294) who were women were convicted for prostitution or loitering for the purpose of same. In the Bronx and Kings, fewer than half of the women were convicted for prostitution, and in Queens and Richmond there were none. Other than for prostitution, there are no outstanding patterns in which women are linked up with certain offenses or sentences, despite small variations which may be caused in part by the small numbers of females.

Distributions of age at arrest are similar throughout the city except in New York County. Offenders in the 16 to 18 year old category make up 14.5% to 19.4% of all offenders in the Bronx, Kings, Queens, and Richmond samples for whom age was available, but 8.6% (79) in New York. Only 1.9% (6 out of 317) of the prostitution-related offenders for whom age was available were 18 or younger.

Criminal history is generally considered the primary offender characteristic that bears on sentencing. New York County is idio-

syncratic in this regard due to the high percentage of prostitutes who have very extensive arrest and misdemeanor conviction records, but are rarely jailed. In New York, 34.5% (256 out of 742) of all offenders with arrest records had more than 10 prior convictions to misdemeanors and violations. Kings followed with 8.1% (25) having such convictions. Counties other than New York had offenders with similar misdemeanor and violation conviction records. In each of the four large counties, roughly 80% of the sample offenders for whom histories were available had no felony convictions prior to sample sentence date, although they had been arrested at least once. Fewer than 4% of those with arrest histories had more than 2 felony convictions.

As far as arrest histories are concerned, in New York County, 11.7% (98) of the sample were first offenders as far as we know from the rap sheets. In the Bronx, Kings, and Richmond, one-fifth were first offenders. In Queens, where total discharge and time served sentences were less frequent than in the other large counties, there was the highest percentage of first offenders--33.8% (77 out of 228).

At this point, it must be suggested that to some extent sentences are based on factors that are less easily measured than offense and offender characteristics. Instead, judges must contend with District Attorney charging and plea-negotiating policies and community pressures.<sup>40</sup> Nor can disparity be attributed to individual judicial preferences; there were too many judges sitting in the four large counties. In Richmond, however, only one or two

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<sup>40</sup>This is based on numerous informal discussions with court part personnel and courtroom observations.



judges sat on any weekday (when most of the Richmond sentencing occurs), while the handful of night and weekend arraignments were in Kings.

### C. FINES CASES - AMOUNTS IMPOSED AND COLLECTED

#### Collection Rate

No figures on the relationship of amounts imposed and collected had ever been kept by the Criminal Court. When court clerks said most people are granted adjournments to pay and then never return, were they right? Considering the limited enforcement efforts and that four-fifths of fined offenders get adjournments, the dollar collection rate of 74.3% citywide was higher than researchers expected.<sup>41</sup> (See Table 10 for county breakdowns.) The low rate in New York County is due to the prostitutes not paying. They may pay at correctional facilities when they are rearrested, however, and the warrant is vacated and the jail alternative imposed.

The aggregate amount imposed during the sample week was \$63,346. By the end of the year, \$47,042 had been collected; \$1,215 had been withdrawn as a result of resentencing a case originally fined, vacating a plea and dismissing another fined case. The \$15,089 balance represents the amount not collected because the warrants were never returned, or because a jail alternative was imposed in lieu of payment; this also includes fine amounts still unpaid at the time of data collection because four offenders had been out on warrants, which were executed only

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<sup>41</sup>Court clerks were right that there are a great many adjournments and that many offenders scheduled to appear do not come in. They fail to account for the high return-on-warrant rate, a finding to be presented subsequently in this section.

Table 10

FINE AMOUNTS IMPOSED AND COLLECTED FOR COUNTY SAMPLES

	<u>NEW YORK</u>	<u>BRONX</u>	<u>KINGS</u>	<u>QUEENS</u>	<u>RICHMOND</u>	<u>CITY</u>
Aggregate Amount Imposed	\$17,721	\$12,005	\$12,850	\$16,670	\$4,100	\$63,346
Aggregate Amount Collected	10,396	9,560	9,901	13,835	3,350	47,042
Collection Rate	58.7%	79.6%	77.1%	83.0%	81.7%	74.3%
						N= 601

offenders had been out on warrants, which were executed only shortly before the end of the follow-up year, and the outcome (imprisonment or payment) was still unknown. Some of these amounts, not collected by the court, may also have been paid at jail.<sup>42</sup>

If the \$47,042 is projected for the entire year by multiplying by 52 weeks, the annual revenue is estimated to be \$2.4 million. This is approximately the same as the \$2.2 million figure provided by the court.<sup>43</sup>

#### Fine Amounts Imposed

The maximum amounts by the court authorized by the Penal Law are \$1,000 for class A misdemeanors, \$500 for class B misdemeanors, and \$250 for violations. Most of the unclassified misdemeanors are Vehicle and Traffic law offenses, and fines are specified for each offense.

The amounts imposed are far below the maximums. There were only four fines of \$1,000. The most common violation and class B misdemeanor fine amounts were \$50, and \$100 was most frequently imposed for class A misdemeanors. Citywide, the mean fine amount was \$105.40. There was substantial variation among the county means: New York--\$92, Bronx--\$99, Kings--\$104, Queens--\$123, and Richmond--\$146. The fine distributions are very skewed, with the heavy concentration at lower amounts and fewer than 20% (123) above the mean. Citywide, the median fine was \$75, and the modal (or most frequent) fine was \$50.

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<sup>42</sup>See Part III-E below, which describes the role of the Department of Correction.

<sup>43</sup>Refer to Section 2 above.

Table 11 presents the most common fine amounts for conviction charge type in each county and Table 12 has a full breakdown of fine amounts by charge for the whole city. The "going rates" for each charge vary greatly among the counties. Queens and Richmond are considered to have the most affluent populations, and this explains at least in part the higher fines. Criminal justice personnel interviewed during site visits often said that the residents are more conservative here, and this may influence the judges' sentencing, and the plea-negotiating practices of the District Attorneys, in the direction of higher fines.

The crimes for which the greatest variation is found are street crimes. In New York, prostitutes are usually given time served, but there are some judges who feel they should be harshly dealt with and therefore routinely give \$150 fines. The gambling cases in New York County are mostly three-card monte, not big gambling schemes. Three-quarters of New York offenders convicted for gambling have had more than ten prior arrests. Judges prefer jail to a fine; the low \$50 fines are for offenders with less extensive records. There are far fewer gambling offenders in the other counties, where street gambling apparently has not caught on. One-quarter of the drug offenders in New York County get fined, whereas half to three-quarters are fined elsewhere. In New York, the fine is a middle course--for more serious drug charges jail is used, and for minor charges offenders get time served. Other than for these three charges, the ranges of amounts are fairly narrow.

Of total sample offenders for whom type of counsel was known, 7.1% (118) had private lawyers. These are the offenders who are definitely not indigent and can afford to pay higher fines.<sup>44</sup>

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<sup>44</sup>The cost of retained counsel for a criminal case starts at \$750 in New York City (in 1981).

Table 11

MODAL FINE AMOUNTS IMPOSED FOR CONVICTION CHARGE  
TYPES BY COUNTY SAMPLES

<u>CONVICTION CHARGE TYPE</u>	<u>NEW YORK</u>	<u>BRONX</u>	<u>KINGS</u>	<u>QUEENS</u>	<u>RICHMOND</u>	<u>CITY</u>
Theft-related	\$100	50	25&100	100	a	\$100
Assault	50&100	100	a	a	b	100
Prostitution-related	150	25	50	b	b	25
Gambling	50	500	100	b	a	100
Dis.Con., Loitering	50	25	50	100	100	50
Trespass	a	25&100	50	a	a	100
Drugs	50	150to250	150to500	500	b	50
Motor Vehicle	25	25	50	50	100	50
Other	50	50&100	a	a	b	100
Total cases	50	25	50	100	100	50

a There were too few cases to identify typical amount

b There were no fines for these charges.

Table 12

FINE AMOUNTS BY CONVICTION CHARGE TYPE,  
CITYWIDE SAMPLE

<u>CONVICTION</u> <u>CHARGE TYPE</u>	<u>\$0-25</u>	<u>\$26-50</u>	<u>\$51-75</u>	<u>\$76-100</u>	<u>\$101-250</u>	<u>\$251-500</u>	<u>OVER \$500</u>	<u>TOTAL</u>
Theft-related	9	10	3	25	15	-	1	63
Assault	-	4	-	7	3	-	-	14
Prostitution-related	25	23	1	1	13	1	-	64
Gambling	-	14	3	18	10	7	3	55
Dis. Con., Loitering	51	54	15	51	28	1	-	200
Trespass	6	7	-	8	2	1	-	24
Drugs	4	19	2	8	13	11	1	58
Motor Vehicle	24	35	6	23	4	-	-	92
Other	<u>4</u>	<u>9</u>	<u>2</u>	<u>7</u>	<u>7</u>	<u>1</u>	<u>1</u>	<u>31</u>
<b>TOTAL</b>	<b>123</b>	<b>175</b>	<b>32</b>	<b>148</b>	<b>95</b>	<b>22</b>	<b>6</b>	<b>601</b>

Seven percent (5 of 72) of those with retained counsel were fined \$25 or less, while 21.6% (86 of 399) of those with Legal Aid and appointed counsel were fined that amount. Almost half (32 of 72) were fined amounts greater than the citywide mean of \$105, but 16.3% (65 of 399) of the presumed indigents were assessed that much. Nevertheless, of the six offenders fined more than \$500, three had Legal Aid and three had retained counsel. In the cases of the former, the judges undoubtedly believed that there was substantial illegal income--three of those who were fined more than \$500 were gamblers and one was a drug dealer.

Judges are almost as willing to impose high fines on youths as on adults. Youths in these courts are 16 to 18 years old. Although the obvious issue is that youths do not usually have much money, it is likely that the judges know (and intend) that the parents will pay. Two of the 49 youths were fined more than \$250. The slightly lower percentage of high fines for youths compared with adults may be due to the former committing offenses associated with lower fines.<sup>45</sup> The collateral factor of shorter criminal records does not seem to come into play, as will be discussed presently. Table 13 presents fine amounts by age.

Controlling for conviction charge type, the number of previous arrests does not have the impact one might expect (i.e., lower fines for fewer prior arrests). Indeed, the judges interviewed indicated that the record was likely to affect the sentence itself, but did not say the record was considered in setting the

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<sup>45</sup>Two-thirds of the sixteen to eighteen year old fined offenders were convicted for disorderly conduct (102 out of 242) and theft-related offenses (60 out of 242). Adults twenty years and older were more likely to be convicted and fined for drug, prostitution-related, and motor-vehicle charges.

Table 13

FINE AMOUNTS BY AGE OF OFFENDER,  
CITYWIDE SAMPLE

<u>OFFENDER AGE</u>	<u>FINE OF \$100 OR LESS</u>		<u>FINE OF MORE THAN \$100</u>		<u>TOTAL</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
16	8	80.0	2	20.0	10	100.0%
17	8	88.9	1	11.1	9	100.0%
18	27	90.0	3	10.0	30	100.0%
19	35	85.4	6	14.6	41	100.0%
20-24	147	80.3	36	19.7	183	100.0%
25-29	78	72.9	29	27.1	107	100.0%
30 and older	<u>150</u>	78.1	<u>42</u>	21.9	<u>192</u>	100.0%
TOTAL	453	79.2	119	20.8	572	100.0%

Twenty-nine cases were missing age for fined offenders.



amount.<sup>46</sup> The data in Table 14 indicate that for some charges, a greater number of previous arrests seems associated with lower fines. The issue of habitual street offenders has been touched on already: prostitutes and minor drug dealers who sell to support their habits will receive low fines or time served; offenders who sell drugs or promote gambling only for the income are jailed. Theft does not follow this pattern, however. The nature of the crime entails a victim and judges deal more severely with this than with so-called "victimless crimes."

Higher fine amounts for certain charges seem to have little bearing on whether an offender is rearrested. When the 601 fines cases are broken down into charges, the numbers in each category are small. Yet it is clear that gambling and drug offenders who are fined more than \$100 are less likely to be arrested. Perhaps the higher fine is a deterrent, or perhaps these offenders become more careful. Fine amount has no impact on rearrests for prostitution. At least four-fifths have new cases, whether fined high or low, or given some other sentence.

The rearrest pattern for offenders convicted of theft is erratic. Those fined \$25 or less and \$76 to \$100 have lower rearrest rates than persons fined in the intermediate and higher charges. Complete details are in Table 15, which should be used with caution because of the small number of cases.

Regardless of charge or sentence, there is a pattern of rearrest associated with the number of previous arrests. Twenty-seven percent (83) of the first offenders in the sample--those with no priors--were rearrested within a year, by far the lowest rate;

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<sup>46</sup>See Section 1 above.

Table 14

FINE AMOUNTS BY PREVIOUS ARRESTS FOR  
SELECTED CONVICTION CHARGES,  
CITYWIDE SAMPLE

<u>NUMBER OF PREVIOUS ARRESTS</u>	<u>\$0-25</u>	<u>\$26-50</u>	<u>\$51-75</u>	<u>\$76-100</u>	<u>Over \$100</u>	<u>TOTAL</u>
<b>Theft-related:</b>						
0	-	-	-	4	1	5
1-5	4	4	1	10	3	22
6 or more	<u>5</u>	<u>6</u>	<u>2</u>	<u>9</u>	<u>11</u>	<u>33</u>
TOTAL	9	10	3	23	15	60
<b>Gambling:</b>						
0	-	-	-	3	2	5
1-5	-	1	-	3	6	10
6 or more	<u>-</u>	<u>13</u>	<u>3</u>	<u>7</u>	<u>10</u>	<u>33</u>
TOTAL	-	14	3	13	18	48
<b>Dis. Con., Loitering:</b>						
0	15	18	4	15	9	61
1-5	21	25	6	23	15	90
6 or more	<u>9</u>	<u>5</u>	<u>4</u>	<u>7</u>	<u>-</u>	<u>25</u>
TOTAL	45	48	14	45	24	176
<b>Drugs:</b>						
0	-	1	1	-	10	12
1-5	3	7	-	6	11	27
6 or more	<u>-</u>	<u>8</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>14</u>
TOTAL	3	16	2	8	24	53

Table 15  
 PERCENTAGE OF FINED OFFENDERS REARRESTED FOR EACH FINE AMOUNT,  
 BY CONVICTION CHARGE TYPE, CITYWIDE SAMPLE

CONVICTION CHARGE TYPE	\$0-25		\$26-50		\$51-75		\$76-100		Over \$100		TOTAL FINED OFFENDERS		OFFENDERS NOT FINED	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Theft-related	4	44.4	6	60.0	2	66.7	8	34.8	10	66.7	30	50.0 <sup>a</sup>	203	64.9
Assault	a		1	25.0	a		3	42.9	-	-0-	4	28.6	16	48.5
Prostitution-related	19	79.2	20	87.0	1	100.0	1	100.0	12	85.7	53	84.1	217	89.3
Gambling	a		13	92.9	3	100.0	12	92.3	8	44.4	36	75.0	26	96.3
Dis. Con., Loitering	20	44.4	20	41.7	7	50.0	18	40.0	7	29.2	72	40.9	95	34.9
Trespass	2	40.0	4	57.1	a		2	40.0	2	66.7	10	50.0	71	55.0
Drugs	2	66.7	12	75.0	-	-0-	7	87.5	9	37.5	30	56.6	43	51.8
Motor Vehicle	2	18.2	6	35.3	1	25.0	3	30.0	1	50.0	13	29.5	8	34.8
Other	2	50.0	6	75.0	-	-0-	2	28.6	3	37.5	13	44.8	49	51.6
TOTAL	51	50.5	88	59.9	14	48.3	56	47.1	52	46.8	261	51.5	728	59.7

<sup>a</sup> There were no offenders fined those amounts for these charges.

NOTE: There were 1727 offenders for whom rap sheets were available. Of those, 507 were fined and 1220 received other sentences. Rap sheets were available for only half of the motor vehicle offenders.

these are the one-time offenders. About half (256) of the offenders with one to four previous arrests were rearrested. Sixty percent (229) with five to ten prior arrests, 76% (192) with eleven to twenty, 81% (83) with twenty-one to thirty, and over 90% (146) of those with more than thirty previous arrests were again arrested before the year was over. This pattern strongly suggests that none of the sentence options deter individual activity once it becomes a way of life, and a higher fine in this context means nothing as far as crime control is concerned.

Payment/Adjournment Status on Sentence Date

Eighty percent of those fined were calendared again: 476 were adjourned, 2 were to apply cash bail, and 1 paid with a bad check and a warrant had to be issued. One hundred and eleven paid at once and five who were resentenced in the sample week to fine amounts lower than previously set paid in full. Six received the jail alternative immediately, presumably because they received jail or predisposition detention on another case.

The pattern of action on sentence date is the same in all counties except Queens, where 65.4% (89) were adjourned. This is significant because fines are higher in Queens. Status by county is shown in Table 16.

Offenders with lower fines are most likely to pay immediately. One-quarter (30) of those fined \$25 or less paid at once, while only 3 of the 28 fined more than \$250 paid immediately. Individual county data, however, do not produce such a neat pattern. In New York, 86.2% (25) of those sentenced to \$25 or less were adjourned, in the Bronx--83.5% (40), in Kings--61.1% (11), and in Queens--34.6% (9). The most likely to pay immediately in

Table 16

PAYMENT STATUS FOR CASES ON  
SENTENCE DATE BY COUNTY SAMPLES

PAYMENT STATUS ON SENT. DATE	NEW YORK		BRONX		KINGS		QUEENS		RICHMOND		CITY	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Paid in full	28	14.5%	17	14.0%	17	13.8%	45	33.1%	4	14.3%	111	18.5%
Reduced fine-- paid in full	1	0.5	1	0.8	2	1.6	1	0.7	-	-0-	5	0.8
Adjourned	160	82.9	103	85.1	102	82.9	87	64.0	24	85.7	476	79.2
Cash bail to be used	1	0.5	-	-0-	-	-0-	1	0.7	-	-0-	2	0.3
Bad check	-	-0-	-	-0-	-	-0-	1	0.7	-	-0-	1	0.2
Jail alternative imposed	3	1.6	-	-0-	2	1.6	1	0.7	-	-0-	6	1.0
<b>TOTAL</b>	<b>193</b>	<b>100.0%</b>	<b>121</b>	<b>99.9%</b>	<b>123</b>	<b>99.9%</b>	<b>136</b>	<b>99.9%</b>	<b>28</b>	<b>100.0%</b>	<b>601</b>	<b>100.0%</b>

New York were fined \$26-50 and in the Bronx, those fined \$51-75.

One-third (30) of the motor vehicle-offenders paid immediately in the four major counties. In New York and Queens, one-third of those who pleaded to disorderly conduct or loitering paid right away. Queens drug offenders were more likely to pay than their counterparts elsewhere. Many charge categories had too few cases to reliably discern a pattern. Table 17 presents the percentage who paid in full on sentence date by charge for each county.

#### Adjournments and Warrants

Of the 479 cases that were calendared subsequent to imposition of the fine, more than half were calendared again, and up to half a dozen times is not unusual. Table 18 is a frequency distribution of calendaring, which includes both returns on warrants and adjournments in the strict sense of the word.

The most significant aspect of the great number of adjournments is that many entailed warrants. Of the 1,138 times the sample cases were calendared (which include return-on-warrant dates), warrants were ordered on 411. We know that at least 227 of the 1138 were warrant returns,<sup>47</sup> leaving 911 actual scheduled dates, which means that offenders did not show up at 45.1% of the scheduled appearances.

Aside from warrants, there were 440 payments (including partial payments), 203 appearances which resulted in an adjournment with no action at all, and 84 appearances at which the jail alternative was imposed or the offender resentenced. Cases marked as

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<sup>47</sup>Information was coded for action on first return-on-warrant date. The number of returns is a little higher because some offenders had a few warrants.

Table 17

PERCENTAGE OF OFFENDERS WHO PAID FINE ON SENTENCE DATE FOR  
SELECTED CONVICTION CHARGES BY COUNTY SAMPLES

	NEW YORK	BRONX	KINGS	QUEENS	CITY
Prostitution-related	-0-	-0-	7.1%	a	1.6%
Gambling	15.2%	10.0%	10.0%	a	12.7%
Dis.Con., Loitering	31.0%	13.3%	12.5%	34.3%	23.5%
Drugs	21.7%	-0-	a	37.5%	19.0%
Motor Vehicle	33.3%	35.7%	31.0%	35.5%	32.6%

<sup>a</sup> There were fewer than 10 fined offenders for charge.

NOTES. Richmond had only 4 who paid immediately.

Charges were omitted if there were not at least 10 offenders in two counties.

Table 18  
<sup>a</sup>  
NUMBER OF ADJOURNMENTS TO PAY  
FOR SAMPLE CASES

<u>NUMBER OF TIMES CASES WAS CALENDARIED</u>	<u>NUMBER OF CASES</u>	<u>PERCENT</u>	<u>CUMULATIVE PERCENT</u>
1	204	42.6%	42.6%
2	143	29.9	72.4
3	49	10.2	82.7
4	29	6.1	88.7
5	18	3.8	92.5
6	14	2.9	95.4
7	7	1.5	96.9
8	4	0.8	97.7
9	2	0.4	98.1
10	2	0.4	98.5
11 or more	<u>7</u>	<u>1.5</u>	100.0
Total	479	100.1%	

<sup>a</sup>  
Some scheduled appearances resulted in a warrant.



native was imposed or the offender resentenced. Cases marked as warrant returns fall into one of these three categories or had another warrant ordered that same day.<sup>48</sup>

Failure to come in to pay fines is one of the major problems with this sentence. Of the 479 who were adjourned, 164 (34.2%) incurred no warrants, 244 (50.9%) had one, 52 (10.9%) had two, 14 (2.9%) had three, and 5 (1.0%) had four or five warrants. One may wonder how someone could be allowed repeated adjournments after more than one warrant. This issue rests, to some extent at least, on offenders' reasons for return. The court records used for data collection did not indicate whether return was due to rearrest, whether the offender became alarmed after receiving the Warrant Division letter, or whether he or she came in for some other reason. Nevertheless, in the course of handling the raw data documents, it became apparent that some people come in within just a few days, which suggests that it may be more a matter of inconvenience than either irresponsibility or willful attempt to evade payment. This is consistent with what practitioners stated during project interviews.

Certain types of offenders seem more prone than others to incurring warrants. Ninety-two percent (56) of the prostitution-related offenders had at least one warrant, while fewer than half of the assault offenders who were adjourned had warrants. Table 19 breaks down warrants by conviction charge.

The proportion of cases in which at least one warrant was ordered was between 64.0% and 69.6% in the four largest counties,

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<sup>48</sup>Occasionally an offender returns to court voluntarily, sits around a short time, and leaves before the case is called, thus incurring another warrant.

Table 19

WARRANTS FOR FAILURE TO PAY FINES BY  
CONVICTION CHARGE, CITYWIDE SAMPLE

CONVICTION CHARGE TYPE	NO WARRANT		1 WARRANT		2 WARRANTS		3 TO 5 WARRANTS		TOTAL OFFERS. ADJOURNED TO PAY	
	No.	%	No.	%	No.	%	No.	%	No.	%
Theft-related	12	21.1	38	66.7	5	8.8	2	3.5	57	100.1%
Assault	6	54.5	2	18.2	3	27.3	-	-0-	11	100.0%
Prostitution-related	5	8.2	41	67.2	12	19.7	3	4.9	61	100.0%
Gambling	24	50.0	20	41.7	2	4.2	2	4.2	48	100.1%
Dis.Con., Loitering	61	40.7	68	45.3	15	10.0	6	4.0	150	100.0%
Trespass	8	36.4	9	40.9	2	9.1	3	13.6	22	100.0%
Drugs	14	31.1	23	51.1	7	15.6	1	2.2	45	100.0%
Motor Vehicle	24	39.3	32	52.5	4	6.6	1	1.6	61	100.0%
Other	10	41.7	11	45.8	2	8.3	1	4.2	24	100.0%
TOTAL	164	34.2	244	50.9	52	10.9	19	4.0	479	100.0%

and 54.2% in Richmond. In New York County, where offenders sentenced for prostitution accounted for 44 of the 139 warrants in all, the proportion of all who had warrants was greatest.

Two hundred and twenty-seven of the 315 with warrants were returned at least once. The breakdown of what happened on the first return-on-warrant date is as follows:

paid in full--39.6% (90),  
 adjourned with no payment--23.8% (54),  
 jail alternative imposed--20.3% (46),  
 partial payment--10.1% (23),  
 resentenced--2.2% (5), and  
 4.0% (9) resulted in some other action.

Of these others, one had the sentence vacated and was dismissed, one or two had died so the case was terminated, and others had new warrants. It is clear from the above that one has a better chance of more time to pay than of going to jail.

#### Payment Status After One Year

Notwithstanding all the warrant activity, the bottom line is the status of fine payment after a long follow-up period. It was noted earlier that the payment rate at court, in terms of dollars, was 74.3% citywide. Yet not everyone paid in full; some had paid partially before dropping out on a warrant that was never returned or resulted in the jail alternative being imposed. Thus the success rate in obtaining fine payment should also be considered in light of the status of all fined offenders at the end of one year.

According to Table 20, 66.6% (400) of the 601 fined offenders paid in full, 18.3% (110) were out on warrants at the end of one year, 11.6% (70) were jailed, 2.7% (16) were resentenced to something other than a fine, 0.7% (4) paid in part, and 0.2% (1) were dismissed. The new sentences imposed consisted of 6 jail terms (as opposed to the jail alternative to a fine), 4 time served, 5 conditional discharges, and 1 unconditional discharge. In

Table 20

PAYMENT STATUS AT END OF ONE YEAR  
BY COUNTY SAMPLES

PAYMENT STATUS AT END OF ONE YEAR	NEW YORK		BRONX		KINGS		QUEENS		RICHMOND		CITY	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
<b>Paid in full:</b>												
No warrant	77	39.9%	52	43.0%	56	45.5%	78	57.4%	15	53.6%	278	46.3%
Ret. on warrant	37	19.2	21	17.4	29	23.6	26	19.1	6	21.4	119	19.8
Resentenced to reduced amount	a		a		a		a		a		3	0.5
											400	66.6
Out on warrant	38	19.7	31	25.6	21	17.1	17	12.5	3	10.7	110	18.3
<b>Jail alternative:</b>												
No warrant	4	2.1	-	-0-	2	1.6	1	0.7	-	-0-	7	1.2
Ret. on warrant	29	15.0	14	11.6	10	8.1	7	5.1	3	10.7	63	10.5
											70	11.7
Resent'd. to nonfine	a		a		a		a		a		16	2.7
Partially paid-- ret. on warrant	1	0.5	-	-0-	1	0.8	2	1.5	-	-0-	4	0.7
Case dismissed-- ret. on warrant	-	-0-	-	-0-	1	0.8	-	-0-	-	-0-	1	0.2
<b>TOTAL</b>	<b>193</b>		<b>121</b>		<b>123</b>		<b>136</b>		<b>28</b>		<b>601</b>	<b>100.2%</b>

<sup>a</sup>  
County breakdowns are not available.

addition, 3 of the 400 who paid in full had been resentenced to a reduced fine amount after the sentence had been imposed.

All 6 offenders who were fined more than \$500 paid in full, and 18 of the 22 who were fined \$251 to \$500 paid in full. Offenders who receive high fines can and do pay them. Persons who are fined \$25 or less are among the worst payers in New York and the Bronx. There is no consistent pattern in Table 21 regarding payment relative to amount. We can speculate that the longer jail threat attached to higher fine amounts encourages payment. The sample data do not support the hypothesis that persons are more likely to pay lower fines in full simply because it is easier to come up with the money.

The statistics in Table 22 indicate that persons fined for assault and gambling charges are among the better payers. These are charges for which fines tend to be higher, and this finding is consistent with the above statements relating amount to payment outcome. Only one-third of the offenders convicted of prostitution-related charges paid in full. Of the balance, equal numbers were not returned to court within the year and were returned and incarcerated. Fines for the latter are paid at jail. It is perhaps surprising that only 70.7% (65) of the motor vehicle offenders fully paid; however there are no provisions to suspend drivers' licenses in criminal cases. Fifteen percent of the remainder were out on warrants and did not serve the jail term in lieu of paying their fines. And in New York City, presumably if one can afford a car, one can afford to pay a modest fine.

#### Length of Time Until Paid in Full

Four hundred of the fined offenders in the sample paid in full within one year of sentencing. One hundred and sixteen paid

Table 21  
 FINED OFFENDERS WHO PAID IN FULL<sup>a</sup> FOR  
 EACH FINE AMOUNT BY COUNTY SAMPLES

FINE AMOUNT	NEW YORK		BRONX		KINGS		QUEENS		CITY	
	No.	%	No.	%	No.	%	No.	%	No.	%
\$0-25	17	58.6	22	45.8	12	66.7	22	84.6	74	60.2
\$26-50	45	70.3	17	63.0	33	70.2	25	73.5	123	70.3
\$51-75	7	70.0	5	100.0	5	55.6	5	71.4	23	71.9
\$76-100	28	58.3	11	61.1	18	60.0	30	76.9	97	65.6
\$101-250	16	39.0	9	64.3	12	92.3	14	73.7	56	58.9
Over \$250	<u>1</u>	100.0	<u>9</u>	100.0	<u>5</u>	83.3	<u>8</u>	72.7	<u>24</u>	85.7
TOTAL	114	59.1	73	60.3	85	69.1	104	76.4	397	66.1
	N= 193		N= 121		N= 123		N= 136		N= 601	

<sup>a</sup> Excludes the 3 resentenced to reduced amounts.

NOTE. There were too few cases in each category in Richmond to calculate percentages.

Table 22

**FINED OFFENDERS WHO PAID IN FULL<sup>a</sup> FOR  
EACH CONVICTION CHARGE BY COUNTY SAMPLES**

CONVICTION CHARGE TYPE	NEW YORK		BRONX		KINGS		QUEENS		CITY	
	No.	%	No.	%	No.	%	No.	%	No.	%
Theft-related	17	41.5	4	80.0	3	42.9	4	50.0	29	46.0
Assault	6	85.7	2	66.7	1	100.0	3	100.0	12	85.7
Prostitution-related	13	35.1	4	30.8	4	28.6	b	-0-	21	32.8
Gambling	24	72.7	10	100.0	9	90.0	b	-0-	45	81.8
Dis.Con., Loitering	24	82.8	26	57.8	33	82.5	48	68.6	143	71.5
Trespass	2	100.0	2	33.3	6	60.0	4	100.0	14	58.3
Drugs	12	52.2	6	50.0	4	57.1	14	87.5	36	62.1
Motor Vehicle	9	75.0	13	92.9	20	69.0	27	87.1	75	81.5
Other	7	77.8	6	46.2	5	100.0	4	100.0	22	71.0
<b>TOTAL</b>	<b>114</b>	<b>59.1</b>	<b>73</b>	<b>60.3</b>	<b>85</b>	<b>69.1</b>	<b>104</b>	<b>76.4</b>	<b>397</b>	<b>66.1</b>
	<b>N= 193</b>		<b>N= 121</b>		<b>N= 123</b>		<b>N= 136</b>		<b>N= 601</b>	

<sup>a</sup> Excludes the 3 resentedenced to reduced amounts.

<sup>b</sup> There were no fined offenders convicted for these charges.

NOTE. There were too few cases in each category in Richmond to calculate percentages.

immediately and the other 284 were adjourned. There is a definite relationship between the fine amount and the number of days until payment because persons with lower fines are more likely to pay on the date fined. By four weeks after sentence, 73.0% (54) of persons fined \$25 or less had paid, 64.2% (79) of those fined \$26 to \$50 paid, 56.5% (13) of those fined \$51 to \$75 paid, 54.5% (54) of those fined \$76 to \$100 paid, and 49.1% (28) of those fined \$101 to \$250 paid. Offenders fined more than \$250 usually paid or completed paying in the second month after sentencing. At least three-quarters of those in all amount categories paid by the end of two months and about 90% paid by six months. Table 23 presents additional details. The Vera researchers who handled the raw data believe that most offenders who took more than two months spent some of that time out on a warrant.

#### Impact of Employment

Unfortunately, data on employment status at time of sentencing were too limited to permit any analysis. Even for Kings, where employment status was available for almost 40% (164) of the offenders in the sample, only 37 of them were fined. Out of that 37, 16 reported themselves as working full time and 3 part time. The other 18 did not go to work or school at the time they were sentenced. Three of the 19 who were employed were fined more than \$100, but 4 of the 18 who were unemployed were also given fines in that range. In fact, 3 who had reported legitimate employment were fined more than \$250, which suggests that a source of illicit income was apparent to the judge.

#### Jail Alternative

The jail alternative set at the time a fine is imposed is intended to elicit compliance. The number of days increases as the



Table 23

NUMBER OF DAYS UNTIL FINES WERE PAID IN FULL BY  
FINE AMOUNT, CITYWIDE SAMPLE

NUMBER OF DAYS UNTIL PAID IN FULL	\$0-25		\$26-50		\$51-75		\$76-100		\$101-250		OVER \$ 250		TOTAL	
	No.	Cum%	No.	Cum%	No.	Cum%	No.	Cum%	No.	Cum%	No.	Cum%	No.	Cum%
0	33	44.6%	42	34.1%	4	17.4%	22	22.2%	12	21.1%	3	12.5%	116	29.0%
1-7	3	48.6	8	40.7	4	34.8	3	25.3	5	29.9	-	12.5	23	34.8
8-14	4	54.1	7	46.3	1	39.1	12	37.4	4	36.9	2	20.8	30	42.3
15-21	10	67.6	7	52.0	2	47.8	8	45.5	3	42.2	-	20.8	30	49.8
22-28	4	73.0	15	64.2	2	56.5	9	54.5	4	49.1	-	20.8	34	58.3
29-60	10	86.5	19	79.7	2	65.2	20	74.7	15	75.5	14	79.2	80	78.3
61-90	3	90.6	12	89.4	4	82.6	5	79.8	5	84.3	1	83.3	30	85.8
91-180	2	93.3	8	95.9	2	91.3	12	91.9	2	87.8	4	100.0	30	93.3
181-366	<u>5</u>	<u>100.0</u>	<u>5</u>	<u>100.0</u>	<u>2</u>	<u>100.0</u>	<u>8</u>	<u>100.0</u>	<u>7</u>	<u>100.0</u>	-	-	<u>27</u>	<u>100.0</u>
TOTAL	74		123		23		99		57		24		400	

dollar amount increases. Twenty-five dollar fines are accompanied by threats of up to 5 days, while fines exceeding \$500 carry alternatives of 30 to 90 days. Table 24 matches up dollar amounts with a distribution of jail days used for each.

There is considerable variation in the number of days set by judges for each dollar range. Judges set amounts that they believe will be a sufficient threat to get the offender to pay voluntarily. The effective number of days will vary with the circumstances of the individual offender, so it is appropriate for a judge to use, for example, \$100 or 5 days for one offender and \$100 or 30 days for another. However, there is no way for a judge to make perfect predictions so many tend to use limited number of dollars-days combinations. The disparity, therefore, may also be a function of judges differing from each other in the general number of days used for various dollar amounts.

#### D. EPILOGUE

Although this quantitative section has been presented in much detail, it is not intended as the last word on fine use in the Criminal Court of the City of New York. Indeed, it is the first word--many of the items herein have never before been developed. Breakdowns of sentences by charge were done manually by court staff until 1977. It had been hoped that the court's computer would be able to generate these data as of 1978, but that never materialized.

According to data from 1977, 42.1% of the 115,711 sentences were fine-only, 23.5% were conditional discharge, 19.1% were jail, 9.2% were time served, 5.2% were probation, and the 1.0% balance were unconditional discharge and commitments to drug abuse

Table 24

JAIL DAYS SPECIFIED AS ALTERNATIVES TO  
FINES BY FINE AMOUNTS, CITYWIDE SAMPLE

<u>JAIL ALTERNATIVE (DAYS)</u>	<u>\$0-25</u>	<u>\$26-50</u>	<u>\$51-75</u>	<u>\$76-100</u>	<u>\$101-250</u>	<u>\$250-500</u>	<u>OVER \$500</u>
0-5	97	71	9	15	11	-	-
10	4	45	9	51	4	1	
15	16	31	4	21	14	-	-
20	-	6	4	2	4	-	-
25	-	-	-	1	1	-	-
30-60	-	7	2	31	46	11	2
90	-	-	-	-	6	7	4
<b>TOTAL</b>	<b>117</b>	<b>160</b>	<b>28</b>	<b>121</b>	<b>86</b>	<b>19</b>	<b>6</b>

NOTE. There were 64 cases for which no jail time was specified. Most were fines used with conditional discharge, which lets the threat of violation of conditions act to enforce payment. A handful were § 221.05 of the Penal Law, for which jail is not authorized.

services.<sup>49</sup> This is quite different from the Fines Project 1979 sample:<sup>50</sup>

Sentences to time already served had increased by almost the same number of percentage points that fines had decreased. The decrease in fines use by 1979 seems to have stabilized. According to unpublished data supplied by the Office of Court Administration for the New York City Courts, there were 22,359 fine-only sentences imposed in Criminal Court citywide during the first ten terms of 1981. This is 31.4% of all sentences for that period. (Figures for other sentences are not maintained by OCA.)

There were dramatic shifts away from fines for trespass and prostitution-related offenses. In 1979, conditional discharge and jail were common responses to trespass, and time served was the most frequent sentence for prostitution. If the sample is projected for the year, it translates into 12,000 fewer fines in 1979 than two years earlier for these two charges alone. The drop in fines use for disorderly conduct and loitering is not as dramatic, but the sheer volume of pleas to these violations account for a loss of an estimated 5,000 fines in this category. Below is a comparison of the use of fine-only sentences citywide in 1977 and 1979 for selected conviction charges:

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<sup>49</sup>Office of Court Administration for New York City Courts, Filings Dispositions and Sentences by Charge: January-June 1977 and July-December 1977 (for Criminal Court of the City of New York).

<sup>50</sup>These figures are not precisely comparable. Project data exclude sealed Youthful Offenders, which Vera researchers estimated as 3-4% of all sentences. Fine combinations in 1977 were recorded under the sentence other than fine. Only about 2% were fine combinations.

	Court Data 1977		Fines Project Sample Data, 1979		
	No. Fines	As % of Total Sents.	No. Fines	As % of Total Sents.	Projection for year 1979
Theft-related	2,905	14.5%	61	15.1%	3,172
Assault	582	15.4%	10	19.2%	520
Prostitution-related	8,609	62.0%	64	19.9%	3,328
Gambling	1,046	86.0%	55	65.5%	2,860
Dis.Con., Loitering	14,423	44.1%	179	35.4%	9,308
Trespass	7,879	45.6%	22	12.9%	1,144
Drugs	1,398	30.5%	50	34.0%	2,260
Motor Vehicle	8,833	75.6%	80	63.0%	4,160

A further note with regard to these sentence data is that total sentences dropped from 115,711 in 1977 to 96,099 in 1979.<sup>51</sup> (This drop did not occur in a vacuum. Filings were 236,000 in 1977 and 203,000 in 1979.)

Notwithstanding the small shift away from fines in the late 1970s, fines remain about one-third of sentences in the New York City Criminal Court and are still the most popular sanction.

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<sup>51</sup>The 1979 figure is from the Criminal Court Comparative Statistical Profile prepared each term by the Office of Court Administration for New York City Courts.

SECTION 5: FINED OFFENDER SURVEYA. METHODOLOGY

One component of the research design was to use the sentence sample<sup>52</sup> to generate a sample of thirty fined offenders to be interviewed by telephone. The purpose of the interviews was to ascertain why offenders did or did not pay and their attitudes about what the fine sentence meant to them.

Despite much effort, researchers were unable to get a representative sample. Therefore the findings will be presented as case studies, with common themes noted but with no quantitative analysis.

Using the court records for the six hundred individuals fined during one week in October 1979, project staff looked through the latest telephone books, matching last names and addresses to get phone numbers. The search was for offenders who reported addresses in the five boroughs of New York City; we did not attempt to get numbers for the small percentage who lived elsewhere. This yielded fifty-six numbers, fewer than ten percent of all fined offenders sentenced in the sample week.<sup>53</sup> Early in the search for phone numbers it became apparent that we would not get many, so it was decided to include persons who had been sentenced to a fine in this period, and persons who were resentenced after the October sentence.

An interview instrument was piloted and, after revisions were

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<sup>52</sup>Section 4 of this Criminal Court report.

<sup>53</sup>Many New York City phone numbers are unlisted, and the proportion unlisted is inversely related to socio-economic indicators such as income.

made, it was translated into Spanish. A copy of the English instrument is Appendix I-C.

Phone calls were made during the day as well as early evening. Eleven interviews were completed. The status of the other forty-five was as follows:

no answer, busy, or not home (two or three attempts were made)--seventeen; moved--eleven; no one by that name at the number--nine; refused to participate--four; prostitutes whom we did not try to contact--two; phone disconnected--one; and offender in jail--one.

Within the first category are household members who answered and said the respondent was out.

#### B. FINDINGS

Eleven fined offenders participated in interviews with Vera researchers. The primary characteristic of the select group is that most were not serious criminals but were people caught in unfortunate incidents. Two did not have rap sheets; they pleaded guilty to disorderly conduct and a traffic misdemeanor, respectively. The former was arraigned on a class B misdemeanor.<sup>54</sup> Other factors that describe these cases are as follows:

- most offenders were employed at the time they were fined;
- half had retained counsel;
- all but one were white;
- only two were fined more than fifty dollars;
- all paid their fines within one year of sentencing; and
- only two had warrants issued for failing to appear on payment dates.

When compared with the sample of all fined offenders, profiled in Section 4 of this report, it is apparent that those we

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<sup>54</sup>Section 160.10 of the Criminal Procedure Law specifies that persons arrested for felonies, misdemeanors, and loitering violations related to sex offenses are to be fingerprinted. Normally, absence of a rap sheet indicates no prior fingerprintable arrests

interviewed are atypical. They had lower fines and a hundred percent payment rate, and more had retained counsel. They tend to fit into one of the two images described by judges as the typical fine candidate: non-violent offense; first offender--especially if older than teenage; socially stable--one criteria being permanent residence; and employed. Only one fit the other image: the individual whose income is from illicit business, such as gambling, prostitution, or selling drugs.

Below are four short case studies focusing on what the experience meant to the offenders, according to their own reports.

1. A sixty-eight year old man with seven prior convictions for gambling (the first one in 1929) was fined \$250, and given four days to pay. He paid a day early--"Who wants to go to jail?" He felt the fine had no effect "at this stage," and that "you have to pay the penalty."
2. A low fine was imposed on a young man for a marijuana violation. The case was calendared four times for payment: once he made a partial payment, once he was given an adjournment without paying, the third time a warrant was issued, and when he was returned, he paid the balance due. He said he missed the court date because he did not have the money and feared bail would be set, which he would not have been able to make. He returned to court when the Warrant Squad telephoned him and offered to drive him to court, thereby serving the warrant.
3. A \$150 fine was imposed on a middle-age man with no priors. The relatively high amount probably reflects the fact that the arraignment was on a felony weapon and assault charge. He was a teacher who was involved in an isolated incident.
4. A middle-age man with a very responsible professional job was fined twenty-five dollars, which he paid immediately. His lawyer's fee was a far greater cost. He said the money was nothing compared with the trauma of the experience. Having been given a desk appearance ticket instead of being held in custody until arraignment, he nevertheless had felt suicidal and had feared he had wrecked his career.

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and that the instant arrest was not printable. It is therefore odd that the offender charged with the B misdemeanor was not fingerprinted.



A recurring theme in the interviews was the relief expressed that jail was not imposed. Implicitly, the fine is perceived as lenient. Most said it was a fair sentence. Even for those who had some difficulty paying fifty dollars or more, no one suffered hardship. The cost of retained counsel was a far greater monetary punishment.

When asked if the fine had a long-term effect on them, many responded in the negative. These offenders made it clear that the trauma of detention--no matter how brief--is what made a lasting impression. They focused on the arrest rather than the court process. Although many were employed, none mentioned losing time from work and none said they had lost their jobs. One noted, however, that it was a problem in applying for jobs.<sup>55</sup> Not only was the process the punishment,<sup>56</sup> the process was described as a deterrent, at least for the middle-class offender.

Yet is the fine really an individual deterrent? Or would these persons not have been rearrested even if no sanction had been levied? That is, are they offenders because of an unusual situation or so discreet in their activities (e.g., patronizing a prostitute) that they are unlikely to be caught? For the latter, perhaps the arrest just makes them more cautious in the future. On the other hand, it is clear that neither the fine nor the process deterred the illegal gambler, who had several priors and was arrested again within the year.

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Since this period, the Criminal Procedure Law has been amended to allow guilty pleas to traffic infractions and most violations to be expunged from the criminal history records kept by the state (Section 160.55-1(c)).

<sup>56</sup>This was also the major finding by Malcolm M. Feeley, The

Interviewers asked the participants how they thought the judges decided how much their fines would be. All said they did not know. Some added comments: "I guess there are guidelines," "It sounded routine," "I guess by how bad the judge thought the offense was," and "Whatever comes out of his mind." These speculative ideas include the opposite extremes of complete discretion to prescribed procedures.

All those interviewed had paid, although warrants had been issued in two cases. Six paid on the sentence date, four of whom had been given desk appearance tickets (summons to appear in court on a specified date for arraignment, given when the defendant was booked at the police precinct and released) and thus had the opportunity to bring money to court in anticipation of a fine. Another, who pleaded guilty and was sentenced six weeks after arraignment, had been told by his attorney that he would probably be fined and to bring money. The last offender was met in court by someone who brought money in case it was needed for bail or a fine. These cases are simple in so far as there were no adjournments to pay.

The other five cases were adjourned, and raise the question why offenders did nor did not return to court. Two came in because they knew a warrant would be ordered. The third was less specific; he wanted to avoid further trouble--"just do what they say."

The two who failed to appear were not trying to avoid paying, according to responses given to interviewers. The offender who had two warrants on this case said he must have gotten the dates

confused. The first time, he returned after five weeks, the second time, after two weeks. Each time he was released on his own recognizance. The other offender feared he would be jailed for nonpayment. Given the fact that jail alternatives were not imposed in these two cases, the judges apparently did not see their actions as willful noncompliance. Instead, these two cases seem to be examples of common reasons court officials provide as explanations of why many offenders do not come in on time to pay their fines.

In summary, the attitudes and perceptions offered by these eleven fined offenders are consistent with descriptions expressed by judges, court officials, and attorneys in New York City.

PART II

FINE USE IN SUPREME COURT

SECTION 1: HOW SUPREME COURT JUDGES MAKE THE DECISION TO  
FINE

A. INTRODUCTION

Statistics produced by the New York State Office of Court Administration and the New York State Division of Criminal Justice Services indicate that fines as a sole sanction comprise one to two percent of Supreme Court Sentences. Using a broader perspective of including fines used in combination with another sanction--usually probation--fines are used a maximum of about five percent. Roughly, then, we are talking about two hundred fine-only sentences and another three hundred combination sentences citywide out of thirteen thousand annually. (Refer to Section 3 of this part for details and citations.)

Researchers had planned to interview five of the 125 judges sitting in Supreme Court Criminal Terms--one in each county. The selection of this small sample was similar to the method used for the Criminal Court sample. Instead of random selection, researchers asked the Chief Clerk or Administrative Judge for the name of a judge who was partial toward or had particular ideas about fines. Still, three declined to participate because they simply do not use fines. They said that almost all of the offenders before them have been convicted of violent crimes and, therefore, fines are not appropriate. This pervasive observation of the nature of the caseload is borne out by the fact that the white-collar crime caseload in each county is too small to provide a full-time part for one judge. Although there may be a separate calendar for special prosecutor cases, these calendars are sparse, providing a few hours of work per week for a judge who has other

obligations as well. Other white-collar cases are scattered among all other parts.

Nevertheless, five judges were finally identified who would participate. Interviews were loosely based on a questionnaire that focused on avoidance of fines (Appendix II-A). The topics covered herein include factors influencing the sentencing decision, fine amounts and payment terms, enforcement, and restitution.

Unlike Criminal Court research, no courtroom observation was conducted. With an average of ten fines per week among 125 parts, this was not feasible.

#### B. FACTORS AFFECTING THE SENTENCING DECISION

The sentence options at the Supreme Court level are state prison (for incarceration exceeding one year), local jail (up to one year), Division for Youth facilities for juvenile offenders (thirteen- to fifteen-year olds tried as adults for violent crimes), probation, conditional and unconditional discharges, and fines. Although various combinations are permitted, they are rarely used, except for coupling fines with probation.

On paper, the overriding factor limiting a judge's discretion is the mandatory imprisonment for violent crimes, as specified in Article 70 of the New York State Penal Law.<sup>57</sup> Half of the indictments are to violent felony offenses,<sup>58</sup> thus about half of the

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<sup>57</sup>The 1978 legislation mandated minimum prison terms as well as restrictions on plea bargaining. (The sentences are specified in the Penal Law and the plea bargaining in the Criminal Procedure Law.)

<sup>58</sup>According to the Semi-Annual Report: Violent Felony and Juvenile Offenses in New York State, prepared by the New York State

sentences come under statutory provisions. It must be noted, however, that the distribution of sentences before and after the law was very similar.<sup>59</sup> The impact seems to be on length of prison terms rather than on whether prison is used at all.<sup>60</sup>

Most interviewed judges did not emphasize the statutes directly when asked what factors affect the sentencing decision; rather they listed offense (indirectly, statutes) and offender characteristics. They evaluate offense in terms of violence, weapon use, injury, property damage or loss, identifiable victim, third-party victim (e.g., the cost of shoplifting is passed on to the consumer), and whether the offender acted alone. The presentence report is the main source of offender profile in terms of age, criminal history (also on rap sheet), employment history and status, economic status, family ties, and according to one judge, "character viciousness."

The crime itself is considered to be more important, and there is consensus that prison will always be used for violence. Although the respondents used different words to describe when fines are used--either alone or in combination--the general atti-

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Division of Criminal Justice Services, February 1981, there were 10,368 violent felony indictments out of a total of 19,682 in New York City in 1980 (page 4). Furthermore, violent felony convictions are about 80 percent of violent felony dispositions (p. 126).

<sup>59</sup>Depending on which figures are used, prison varied only slightly overall. According to statistics from the Office of Court Administration for New York City Courts, in 1977, 62 percent (6,409 out of 10,295) of adult offenders convicted of all felonies were sent to prison, compared with 59 percent (6,326 out of 10,733) in 1980. (The latter percentage is based on Vera's aggregation of raw data supplied by OCA.) In DCJS's analysis of the 1978 law, there is an increase from 62 percent to 65 percent violent felonies only.

<sup>60</sup>This is one of the findings in the DCJS impact analysis.

tude is the same. One judge said he uses a fine when incarceration is not appropriate, the offender would not benefit from probation, and conditional discharge is not enough. He specified gambling, some drug cases, and auto-stripping (other than "chop shops") as typically resulting in fines. A second judge prefers to impose fines for certain drug cases (fine in combination with probation), situational assaults, and weapon charges with mitigating circumstances. An example of the last offense is possession of a gun by an "ordinarily respectable person," such as a store owner who is fearful of a robbery. Another judge fines for malicious destruction of property, driving under the influence (unless there are injuries resulting from an accident), larceny, "noncriminal person" with a gun, and white-collar crime. The fourth, who uses fines only in isolated cases, will consider a noncustodial sentence for young offenders with no criminal history who committed nonviolent felony crimes. The last judge has the special prosecutor calendar, which also contains several misdemeanors. Offenders are predominantly middle class and retain private counsel.

White-collar crimes also reach disposition at the Supreme Court level. These crimes may be felonies, as determined by the dollar amount involved in the offense, or misdemeanors that come under the jurisdiction of special prosecutors in Supreme Court. Other white-collar offenses come under Federal jurisdiction. Whether perpetrated by individuals or corporations, they are distinguished from other forms of theft by the use of deceit rather than violence and generally the larger sums stolen or otherwise



gained. Due to the nature of these offenses, fines--often with probation--are the most common sentence in courts throughout the country.

(A different type of offense perpetrated by corporations and business people are those against local ordinances (e.g., health or fire codes. These also generally result in fines, but are usually found in summons parts, not Supreme Court.)

The final issue for a judge in deciding to fine is the belief that the offender can and will pay. Judges say there is no point in fining an individual who probably will not return to pay. By this stage of the case, there will have been several court appearances. For those who have been out on bail or their own recognizance (at least at one point) judges report using appearance history to predict whether the offender will return to pay.

Two judges interviewed said indigency is the main reason fines are not used more--the seriousness of Supreme Court cases would lead to the imposition of fine amounts beyond the means of many offenders. One judge also reported that he avoids fines for affluent offenders, who should not be able to buy their way out. But he also felt the statutory maxima are too low for the few who do have means.

The vast majority of offenders are described as poor. Evaluation of means is based on information in the presentence report; whether there is private or Legal Aid counsel; discussion with counsel; and whether bail was made, the amount, and who put it up. On rare occasions, a judge may talk with a relative, write to the employer (only if it will not jeopardize the offender's job), or have a probation officer go to the offender's home to as-

sess the standard of living.

In summary, the constraints on sentencing are laws, judges' attitudes, and offenders' means. These factors eliminate many defendants from being considered candidates for fines. But one judge interviewed questioned the attitude constraint. He was on the Criminal Court bench for several years and became accustomed to using fines on a regular basis. Most of his Supreme Court colleagues, he said, just "don't think fines." This judge believes that a wider application of fines in Supreme Court would be appropriate and also make some money for the state.

#### C. SELECTION OF A SENTENCE

Fines are regarded as relatively lenient sentences, although one judge noted that the dollar amount must be considered in the comparison. There is agreement that the goal of a fine is to punish. For a theft, the fine removes gain and is thought to reinforce individual deterrence. Outside the traditional philosophical discussion of sentencing goals, one participant regards a fine as a court cost (which is illegal per se in New York State), which makes the offender pay for State expenses he or she caused.

It was stated earlier that judges sometimes use fines in combination with other sentences. There are no apparent patterns here, perhaps because of the small sample. The white-collar crime judge uses fines with conditional discharge (one year by law). It sets up a convenient enforcement hook and may be used to force compliance with liquidation of assets. Another prefers the fine and jail combination for white-collar offenders.<sup>61</sup> For other

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<sup>61</sup>Sentencing white-collar offenders is treated at length in

crimes, this judge prefers probation and fine--probation for supervision while the fine adds the element of punishment. This judge added that for misdemeanors he couples a fine with conditional discharge, which he described as a form of probation that does not entail reporting. It should be noted that mandatory imprisonment for a violent felony does not legally preclude imposing a fine as well; in practical terms, however, the marginal punishment value of a fine in such cases would be too small to serve any purpose. Payment would also probably be deferred for many years--until after release--and then, there is no certainty that the offender, long without income, could afford to pay.

Prosecutors and defense attorneys play less of a role in Supreme Court sentencing than in Criminal Court. According to the data prepared by the Office of Court Administration, about ten percent of the convictions are by trial, thus eliminating any plea negotiation in these cases. Charge reduction is limited in the plea bargaining of violent felonies, for which minimum jail is mandated. This leaves roughly half of the cases open to plea-sentence bargaining. Regardless of promises made at the time of plea, judges reserve the right to impose a different sentence if it seems appropriate based on the presentence report. And unlike Criminal Court, where sentences are often imposed without the PSI, in Supreme Court an investigation is always ordered. It should be added that the Probation Department's recommendation is of substantially less interest to judges than is the information about the offender.

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the Fines in Sentencing Literature Review, Working Paper Number Five in which both sides of the debate on jail are presented in philosophical and practical aspects.

Most fines set in the Supreme Court are between \$250 and \$1000, well below the statutory maxima for felonies. White-collar offenders will be assessed much higher amounts, and the Penal Law provision for fining at double the gain is more likely to be applied to this handful of cases.

Determination of the amount is based on the type and seriousness of the case and "what the traffic will bear."

Counsel will request time to pay if it is needed. The judge typically asks how long is needed and grants it if it is not excessive. This generally means an extension of up to two months. One judge interviewed said he personally sets up an installment schedule if more than two months is requested. But even deferred payment will become an irregular installment plan for offenders who come into court requesting more time, which is always granted as long as the court believes an effort to pay is being made. Another possible outcome of difficulty in paying is reduction of the fine amount.

The Criminal Procedure Law provides for an indigency hearing to prevent the offender from being jailed merely for inability to pay. (Nevertheless, the offender can be resentenced to any sentence that is authorized by law for the charge and this may be incarceration.) These hearings are rarely conducted because they are said to take too long; instead judges report making less formal inquiries. Because judges are amenable to reducing amounts or giving more time, we are told offenders tend not to request formal hearings.

#### D. RESTITUTION

In cases where there is an identifiable victim who suffered

economically, the imposition of restitution is often considered in Supreme Court. It is almost always in the form of money, but it can be return of property. Restitution is bound by all the constraints applied to fines. Because of pervasive poverty, sometimes only partial restitution is ordered, and it is rarely used in conjunction with a fine.

Restitution is usually subsumed instead under probation. Default will result in a hearing to determine if probation was violated. An alternative method favored by one judge interviewed is to let the offender make restitution before sentencing, and then give a conditional or even unconditional discharge.

#### E. SUMMARY

The main highlight of these interviews with Supreme Court judges is that fines are not deemed an appropriate sanction for crimes of violence. Yet it is also hinted that this might be altered if judges were faced with offenders of greater means.

The administration of fines is potentially expensive. Once a warrant is ordered, enforcement can become costly. This pitfall is avoided by being selective in screening fine candidates, not only to avoid the expense, but also because a fine is viewed as not appropriate for this sort of unreliable person in the Supreme Court. Even for those who willingly pay, installments entail bookkeeping and paperwork. However, it is not primarily the cost that deters judges from fining felony offenders. Although two judges mentioned system costs--low fines cost more to collect than is paid, and fines produce revenue to recompense the state for its expense--this factor is not a significant determinant in the use of fines for felonies.

SECTION 2: ADMINISTRATION OF FINESA. INTRODUCTION

This description of the administrative aspects of fines in Supreme Court is based on interviews with the General Clerks (called Assistant Chief Clerk in some counties) supplemented by information from persons directly involved with fines collection. (Appendix II-B has questionnaire.)

Because fines are such a small part of Supreme Court business, there are no separate offices for collection. In all five counties, collection is a function of the General Clerk's Office (GCO). There are no special windows where payments are made. In New York and the Bronx, any of the clerks or senior court clerks in the GCO can take a payment. Likewise, in Richmond, where there are fewer persons in the GCO, anyone can take a payment. In Kings and Queens, one person is assigned to act as the regular fines clerk. As will be described in the section on records and banking, procedures differ in Kings and Queens from the other counties. It will also be noted that in these counties, court clerks act as collection officers, not just cashiers. No matter what the arrangement, however, the equivalent of roughly one-half person is devoted to fines duties out of 100 to 150 persons in the four major counties.

B. FINE PAYMENT

An offender fined in the Supreme Court who can pay immediately goes straight to the GCO, sometimes accompanied by his/her lawyer or a court officer. A receipt is issued, with any balance due noted on it.

Use of adjournment slips are a matter of county policy. In some counties they are always used, in others verbal instructions are felt to suffice. The small percentage of offenders who have retained counsel will be reminded by their lawyers to come in to court.

The higher the fine, the more likely an installment plan will be set up. Details of the terms will be worked out by the judge, the court clerk handling fines, or a probation officer. Adjournments intended as outside dates for deferred payments often become the first of a series of payments.

Persons who come in with less than the amount due, or with no money at all, are almost always given more time. In New York County and the Bronx, they are sent into the sentencing judge, as the court clerks have no discretion. In Queens, the clerk telephones the judge for approval. In Richmond, the clerk may grant an extension of a few days, but an offender requesting substantial time must appear before the judge. In Kings, the fines clerk has a great deal of discretion regarding adjournments. The general pattern appears to be that where one clerk functions as the fines clerk, he has discretion, whereas clerks in counties where a dozen clerks are involved in collection have no discretion.

Fined offenders who come in voluntarily, but after a warrant has been ordered, must be brought before the judge for the warrant to be vacated. Voluntary return with an offer to make a payment that day will usually be well received. Without the element of willful noncompliance, a judge would not vacate the fine in order to impose jail.

Acceptable modes of payment in all counties are cash, money order, and certified checks. The Kings County court has an ar-

rangement with a local bank for offenders to be given bank checks at no charge upon presentation of a form issued by the court. This court is also the only one to accept personal checks. Checks and money orders are made out to the County Clerk in New York, the Bronx, and Richmond, where the monies received are walked over to the County Clerk's Office instead of court staff making the deposit. In Kings County, checks are made out to the "Supreme Court, Kings County, Fines Account," and in Queens to the "Director of Finance" (of the City of New York). Mail payments are acceptable throughout the city and are common for weekly and bi-weekly installment in schedules lasting for protracted periods.

Offenders who have put up cash bail may apply it to the fine payment. The offender or surety must sign an authorization for such application. Bail in excess of the fine is refunded to whoever put it up.

Unlike the Criminal Court, cash registers are not used. Money is kept in folders or envelopes. Thus the receipts are three-copy forms (four-copy in Richmond) on letter-size paper with blanks for the particulars of each case. One copy is retained by the court, one is for the offender, and one or two are for the County Clerk.

### C. PAYMENT RECORDS AND BANKING

Although records are not standardized throughout the city they are, in essence, the same.

All payments are recorded in a cash book, which is a chronological log of all payments. These are large ledgers in four counties and open manila folders bound together in Queens. The entry on each line includes payment date, indictment number, of-



fender's name, amount of payment, and sometimes balance due. The dates on the first page of the Bronx book are from 1917, and this same book appears to have been used continuously since that time. It is clear that the fine is used infrequently. These cash books are a master record, but do not seem to have much practical utility.

These manual records of individuals are the management tool used to keep track of fine amounts and dates due. The formats differ. In New York, a small book with a separate page for each "account" is used. In the Bronx, Kings, and Richmond, calendar cards or a "tickler file" are used. A folder for each case is kept in Queens along with a diary of payments due.

Receipt copies are part of bound books or individual pieces of paper. They seem to be an incidental record, serving only as evidence that a payment was made.

In New York, the Bronx, and Richmond, the money is brought to the County Clerk's Office with copies of the relevant receipts. The court is relieved of all bookkeeping relative to banking. In Kings, deposits are made daily into a court account and later transferred to the City, while in Queens the deposits are made every ten days or so into a Department of Finance account. In the latter two counties, the court is required to do some additional paperwork. No court official could say why there are different systems. All we could determine is that in the three counties where money is brought to the County Clerk, the reason is said to be security.

Through 1978, fined probationers paid the Probation Department in all counties except Queens, where they paid the court directly.

When asked about audits, the General Clerks gave divergent answers. For example, in New York County, the state auditor came in early 1981 for the first time in a few years. In the Bronx, the state audited in 1977; in Queens, the fines clerk had not seen a state auditor in his six years there; and in Richmond it had been a few years. The City stopped auditing in 1977, when the statewide court unification took effect.

No records are kept of total fines imposed in Supreme Court. Fines collected, however, were:

New York	\$ 91,469	Fiscal year ending 3/31/81
Bronx	101,425	calendar year 1980
Kings	153,111	calendar year 1980
Queens	660,000	calendar year 1980
Richmond	<u>21,855</u>	calendar year 1980
Total	\$1,027,860	

Due to the low volume of fine cases and exceptionally high fine amounts sometimes imposed in Supreme Court, amounts from year to year may vary dramatically. For example, in Richmond, \$260,745 was collected in 1978--this probably included the "hot oil case" fine of \$150,000. In 1979, \$56,525 was collected.

#### D. ENFORCEMENT

In the lower court, the conventional fine statement is dollars/days. Some of the Supreme Court judges interviewed for this study said they also frequently state a jail alternative to a fine. While there is a loose pattern of the number of days increasing as fine amounts increase, judges select a period that will be long enough to pose a serious threat for noncompliance. Presumably, when fines are used with a conditional discharge or probation, a jail alternative is unnecessary. Willful default will be a violation of conditions, and the case will be restored

to the calendar for possible violation of probation or conditional discharge action. Such a violation can result in resentencing to incarceration.

The most common indicator that default is willful is in the offenders not coming to court or telephoning with an excuse on the payment date (or within a few days of it). By at least coming in and asking for more time, offenders are felt to be making an effort. Even when a bench warrant has been issued and served, however, willful noncompliance is not assumed. Judges still ask why the offender failed to show up, and if they are told a convincing story, they will grant an adjournment.

The various forms of tickler files of cases pending fine payment are the mechanism by which the clerks know when someone has failed to appear. In New York and the Bronx, the court part of the sentencing judge is alerted the same day. The judge orders a bench warrant, the paperwork is done immediately, and the warrants are sent by all parts to the respective GCOs to be forwarded to the Police Department Warrant Division the day after the no show.<sup>62</sup> In Richmond, they wait a week before issuing the warrant. There are no warning or coaxing letters or phone calls in these three counties.

Enforcement procedures are more elaborate in Kings and Queens, where there are designated fines clerks. In Kings, the fines clerk waits for a period of two months; if the offender does not contact the court by then, he sends out a reminder form let-

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<sup>62</sup>The similarities between New York and the Bronx (together comprising the First Department) are not coincidental. Supreme Court Criminal Terms of the First Department fall under the same judicial and nonjudicial administrators along with Criminal Court citywide.

ter. Kings Supreme Court officials find this to be very effective. But if the letter does not elicit payment or a response, the clerk has the case put on the calendar, notifying the offender and his or her attorney of this action. This often produces some more payments--usually the day before the court date. If the offender does not appear on the assigned date, a bench warrant will be issued. This is said to have brought in all except two or three out of thirty calendared offenders in a two-year period.

Similarly, in Queens, the court makes an effort to get the defaulter in. The fines clerk usually requests and receives permission from the sentencing judges before proceeding with letters. Eight days after the failure to appear, he mails a form letter on which he notes that a money order may be mailed in. If there is no response, upon approval by the judge, he makes additional attempts until he feels he cannot get payment. A few months will have passed by this time. The clerk notifies the Probation Department (if offender is on probation) or the judge, and a warrant will often be ordered at this point.

The General Clerks reported that the Warrant Squad does make an effort to locate the offenders and serve the warrant. Warrant Squad priorities are based on seriousness of cases, which explains why Supreme Court fine defaulters are pursued more diligently than Criminal Court defaulters.

Enforcing payment from corporate and other white-collar offenders is an entirely different matter. Because a monetary sentence is the only option for corporations, officers are routinely indicted as co-defendants. One judge said he keeps the cases

against the officers open until the corporation pays its fine. Fearing jail, the officers will see the fine is paid. After that, this judge, who admits that he is manipulating the case to have a hook, said he may dismiss the cases. The judge who has the special prosecutor calendar added that the wrongdoing discovered in the indictment may be only "the tip of the iceberg," so the corporate officers want to wrap up the case to prevent the prosecutor from further investigations. Furthermore, white-collar offenders find their criminal status very upsetting and usually pay their fines promptly. It is suggested, then, that eliciting payment of white-collar fines does not pose a problem because of middle-class values rather than ability to pay. Collection will be a problem however, if the corporation is defunct or has gone into bankruptcy.

SECTION 3: QUANTITATIVE ANALYSIS

The Fines Project obtained court records of sentences imposed during the week of October 22-28, 1979.<sup>63</sup> Because the records in the data base contain individual identifiers, some records we received were marked "sealed" and did not show disposition information. Although the request was for sentences only, the Vera analyst is fairly sure that all dispositions, that is, even dismissals, were provided.<sup>64</sup> Based on other court statistics available, Vera estimates that there were 25 to 30 youthful offenders, in addition to the 220 sample sentences (which were clearly identifiable as such).<sup>65</sup> It is these sentences that would be sealed. Thus the Fines Project sample is only about ninety percent complete, with the greatest deficiency among probation sentences.

The sentence distributions in Table 1 are for the actual sample and also for the sample adjusted by adding thirty youthful offenders.<sup>66</sup>

The sample contained no fine-only sentences and four fine plus probation sentences. Below is a brief profile of each case.

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<sup>63</sup>Records were furnished by Meditech, the software supplier of the Offender Based Transaction Statistics system, under the jurisdiction of the State Office of Court Administration.

<sup>64</sup>We received 408 records, of which 40 were superceded by other indictments and grand jury returns, and 148 were sealed, leaving 220 for our sample.

<sup>65</sup>Monthly sentence reports were supplied by the Office of Court Administration for New York City Courts. These were aggregated by the Vera analyst. Out of 13,102 sentences, 1,555 (12%) were youthful offenders. If total sentences is divided by 52 weeks, there were, on the average, 252 sentences per week.

<sup>66</sup>The sentence distribution of the thirty youthful offenders is based on 1978 Office of Court Administration figures and the 1980 OCA data that Vera aggregated. Data for these two years are

1. Arraignment charge: Sale of controlled substance 3rd degree--Class A felony (reclassified to B felony by sentencing date).  
Pleaded guilty to: Sale of controlled substance 5th degree--Class D felony.  
Male, Hispanic, 23 years old on arrest date.  
Sentence: \$500 and 5 years probation
2. Arraignment charge: Possession of weapon 3rd degree--Class D felony (no accompanying assault charge).  
Pleaded guilty to: same.  
Male, White, 22 years old on arrest date.  
Sentence: \$5,000 and 5 years probation.
3. Arraignment charge: Grand larceny 3rd degree--Class E felony.  
Pleaded guilty to: Possession of stolen property 2nd degree--Class E felony.  
Male, White, 28 years old on arrest date.  
Sentence: \$500 and 5 years probation.
4. Arraignment charge: Assault 2nd degree--Class D felony (accompanied by weapon charge).  
Pleaded guilty to: Attempted assault 2nd degree--Class E felony.  
Male, White, 23 years old on arrest date.  
Sentence: \$500 and 5 years probation.

None of these are violent charges. The assault was most likely a "situational" fight.<sup>67</sup> The outstanding element all four offenders have in common is private counsel. It tends to support statements by the judges interviewed who seemed willing to fine if the offenders had the means to pay amounts sufficiently high to give an appearance of justice. By comparison, none of the 114 who had Legal Aid or appointed counsel were fined. The four fined offenders were among eighteen with private counsel. Type of counsel was not reported for the other eighty-eight.

This sample yielded a slightly lower probation of fines than the 1980 annual statistics show. Out of 13,102 sentences, 198

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very similar.

<sup>67</sup>"Situational" refers to an isolated incident that erupted out of a particular set of circumstances. It distinguishes between the habitual criminal and the basically law-abiding person

(1.5%) were fines-alone. (Fines are recorded when paid in this system. Also, fines used in combination with another sentence are recorded under the other sentence.)<sup>68</sup> But based on discussions with judges and other court personnel, it seems that at least half of the fines are in combination with probation, conditional discharge, or (infrequently) time served or jail. For example, Vera analysts reviewed the thirty Richmond Supreme Court cases that had fines imposed in 1980. Thirteen were fine and probation, seven were fine and conditional discharge, and ten were fine alone.

A close look at the 198 fines is illuminating. Seventy-five were for charges reduced to misdemeanors, six for violations, and one for a youthful offender. That leaves only fifty-nine percent (116) for felony convictions. The most common charge was weapons; this was prior to the 1980 legislation mandating imprisonment for gun possession. Table 2 focuses on the proportion of fine-only sentences by charge.

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who has gotten into trouble.

<sup>68</sup>The source is OCA data named in a previous footnote. It should be added that the forms--named Return E--are required by the Division of Criminal Justice Services. OCA is responsible to ensure that the county courts fill them out, and OCA forwards the completed reports to OCJS, retaining copies.



PART III

OPERATIONS AND ATTITUDES OF OTHER  
CRIMINAL JUSTICE AGENCIES

A. INTRODUCTION

The Vera Fines Project entailed extensive research regarding fines use in the New York City court system. This chapter will complete the picture by reporting ideas and operational details provided by other major participants in the system. These include prosecutors, Legal Aid attorneys, the Probation Department, the Police Department Warrant Division, the Department of Correction, and the City and State fiscal agencies.

Sentences are often the result of plea negotiations, and as such they are not within the exclusive domain of the judiciary. In the absence of a trial, case outcome is, realistically, a three-way agreement. Vera researchers interviewed representatives of each District Attorney's Office, the Legal Aid Society's Criminal Defense Division county offices, and a Legal Aid Special Assistant. (The questionnaire used is Appendix III-A.) It should be noted that the five District Attorneys in the City are autonomous while the Legal Aid Society is a private, citywide operation. Discussions were focused on Criminal Court rather than Supreme Court because of the widespread use of fines in the former and a pervasive attitude that a fine is not appropriate for the high volume of violent offenders in the upper court.

Short sections follow that treat the Probation Department, the Warrant Division, the Department of Correction, and fiscal agency involvement. The section on prosecutors and "public defenders" (i.e., Legal Aid Society lawyers) is largely attitudinal. The others address administrative and operational details that will supplement descriptions provided in the Criminal and Supreme Court reports.

Details regarding jurisdiction, caseloads, and sentence op-

tions of these courts are in the New York City Criminal and Supreme reports, and so will not be repeated here.

#### B. PROSECUTORS AND PUBLIC DEFENDERS

There is consensus that the fine is a lenient sentence in New York City. All except one of the eleven attorneys interviewed described conditional discharge as a "throwaway," leaving probation and incarceration as more severe than the fine. A few respondents noted, however, that the lenient character of the fine is due to its low dollar value. The image of lack of enforcement against those who do not pay also adds to the lenient image.

Plea negotiations and sentence recommendation policies vary among District Attorneys' offices. Nevertheless, an Assistant will not recommend a fine in any county. If a sentence recommendation is made, it will be jail; otherwise, no recommendation is offered. They do not suggest probation as a presentence report is needed for a judge to impose that. Still, fines are considered acceptable for certain types of cases. As will be discussed shortly, this is sometimes more a matter of having no better option than a preference for the fine per se.

Legal Aid attorneys say they are not partial toward fines because their clients are indigent, yet they regard the fine as a favorable outcome compared to jail.

There was skepticism that the fine serves any utilitarian sentencing goal. It may be an individual deterrent for "fare beats" (those who use the subway without paying the fare as required), but it is generally regarded as a punishment. The offender who does not recidivate may be responding to the night in jail awaiting arraignment rather than to the fine. Although

prostitutes, gamblers, and drug pushers are commonly fined, for them it is viewed as a business expense. One Legal Aid lawyer described the fine as "a pound of flesh." Three Legal Aid attorneys relegated the system's preference for fines to an administrative issue in that it costs less to fine than to incarcerate. About half of the participants said judges use fines as an easy way to get cases off the calendar, and two Assistant District Attorneys criticized the judiciary for using fines too much.

The offenses that fines are used for are relatively non-serious. Most summons case guilty pleas result in fines and the balance in conditional discharge.<sup>69</sup> For arrest cases, fines are the typical response to disorderly conduct, property offenses, shoplifting, drug possession and sale, fights without serious injury, prostitution, gambling, and motor vehicle offenses. Although preferred for first offenders, the fine seems to be an acceptable response to those who earn illicit incomes. It may be the only response to activities that many prosecutors and defense attorneys feel should not be in the criminal statutes. A Legal Aid lawyer said, "You can't legislate morality." (He noted various forms of legalized gambling in the State as indicating that the State does not unequivocally denounce gambling, and indicated its selectivity may be viewed as arbitrary.) Some respondents said even jail would not deter these people. One Assistant noted that once the word is out on the street that an area is being "cleaned up," offenders just relocate.

For many property crimes, respondents stated that restitution makes more sense in that the victim's loss is compensated and the

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<sup>69</sup>Few summonses involve prosecutors or defense lawyers.

offender is forced to think of the victim. Nonetheless, two Legal Aid lawyers rejected monetary sentences for shoplifting. One said that for the first offense, there should be an unconditional discharge; for the second, five days in jail, and for offenders with long histories and drug addiction, a maximum of thirty days. He feels that shoplifting is a minor crime, despite its economic impact. The other Legal Aid lawyer attacked law enforcement of shoplifting at great length: Security personnel of stores have a system of photographs; they should recognize known shoplifters and keep them out of the stores; shoplifters who are caught do not keep the merchandise, so the store does not suffer a loss; those who steal due to need cannot afford a fine; persons who steal food often spend a lot legitimately in the store on that trip; offenders who are kleptomaniacs need psychological help, not a fine.

Fines are rejected by both sides for violent crimes, although a Legal Aid attorney qualified his response by saying that his organization's clients are too poor to pay a fine that would be high enough to be considered appropriate for such an offense.

All respondents believe that the offender's means should be a consideration in deciding whether to impose a fine and in setting an amount. One Legal Aid lawyer said that even most unemployed offenders manage to pick up a day's work here and there or can get money from relatives. Yet not all those interviewed agreed that everyone could pay some amount, even if it was very low and time to pay was given.

Not having money and fearing jail was offered by all Legal Aid lawyers, and one Assistant District Attorney, as a reason some

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Refer to Part I Section 3 above (Summons Cases).

offenders fail to come to court on the date scheduled to pay. The other main reason given was irresponsibility. One representative from each side said that people know that they can get away with not coming in as long as they are not rearrested. For them, it might be suggested that the unpaid fine is a deterrent.

For many reasons, the fine is described as a middle-class option. It is the middle-class offender who is viewed as being able to afford to pay and as most likely to return to pay because of a sense of responsibility. The fine is not perceived as evenhanded because the poor person would be sent to jail instead. One Assistant expounded on the fairness aspect saying that any act of criminality puts one in the position of being subject to jail, but sentencing is unfair only when someone who deserves jail is fined just because he or she can pay. Some argue that the first arrest is a particular trauma for a middle-class person, who gets a criminal record and must pay an attorney's fee. The fine is seen as a double punishment. One Legal Aid attorney refuted this, saying that the middle-class, law-abiding, one-time offender feels a need to be punished. (He compared it to the Jewish Day of Atonement--a need to absolve oneself.) The fine is thought to serve this purpose.

One respondent suggested use of deferred sentences as an alternative, which he described as a variation of conditional discharge and mediation. After some designated period (e.g., three to twelve months), the case would be calendared and the offender would return to court. The civilian complainant would either come in or otherwise contact the court to let the court know if the of-

fender complied with conditions such as staying away from the complainant. If the offender violated any of the conditions, then any authorized sentence could be imposed. On the other hand, if the offender did comply, there would be no penalty. Admittedly, this is a middle-class option due to the transiency of a great percentage of the offender population. By being a middle-class option, however, its implication for fines is that the offender who has returned to court would most likely be a good candidate for a fine if a penalty is imposed.

Community service was approved by all respondents for both poor and affluent offenders. Still, issues were raised relative to the high administrative cost and a possible constitutional problem of servitude. One Legal Aid attorney prefers it as a form of dismissal rather than a conviction.

### C. NEW YORK CITY DEPARTMENT OF PROBATION

Vera researchers met with the Deputy Commissioner for Management Services and Analysis and the Executive Assistant for Adult Court Services. They described how the presentence investigation is conducted and discussed sentence recommendations.

Presentence reports always contain a sentence recommendation. In determining what to recommend, the question is whether the offender is a threat to the community. If the answer is "No," probation is the most likely recommendation. They do not view fines as appropriate in cases involving crimes against the person. For property crimes where there is an individual victim, they prefer restitution as part of probation. Therefore, fines should be restricted to crimes against government or bureaucratic organizations. Given this viewpoint, they also reject fines used in com-

bination with probation. These two sentences are said to "differ in an essential way," making them incompatible with each other.

Sentencing persons convicted of "moral" offenses, such as prostitution and gambling, was not discussed because sentencing these persons is a matter of plea negotiation. Presentence reports are not required.

#### D. NEW YORK CITY POLICE DEPARTMENT WARRANT DIVISION

In the course of our field work in the New York City Criminal Court, persons in various nonjudicial positions indicated that one of the big problems with fines is that they are not enforced. The following question was addressed to Borough Chief Clerks: "What do you think happens to most people who default: do they come back on a new arrest, does the Warrant Squad get them, or do they never return because they stay out of trouble?" The uniform response was, in essence, that nothing happens to most (i.e., they never return), and of those who do return, it is usually due to a new arrest. Other nonjudicial personnel gave similar responses. This perception provides a fascinating backdrop to the actual statistics on payment reported above--two-thirds of the defendants pay and three-quarters of the fine dollars are collected--and to actual Warrant Division operations.<sup>70</sup>

Based on the Fines Project sample sentence data, two-thirds (479 out of 601) of fined offenders are given time to pay. Of the 479 defendants whose cases were adjourned, 315 (66%) had at least one bench warrant issued for failure to come in to pay as sched-

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<sup>70</sup>On the other hand, three of the nine Criminal Court judges interviewed did give the Warrant Division credit.



uled. The fact is that 72% (227) of them were returned to court, although some had subsequent warrants.<sup>71</sup> This phenomenon is not perceived by court staff, but it is certainly known to the Executive Office of the Warrant Division, although he never saw any statistics.

The Warrant Division receives all warrants and classifies them by court and offense. The classification determines the enforcement priority. In limiting this outline to fine cases, top priority is given to felonies (fine defaults in Supreme Court), second priority to misdemeanor and violation arrest cases (Criminal Court fines), and lowest priority to defaults on fines for summonses.

When warrants are received the information is entered into a computer system. They wait about two weeks to give the defendant a chance to come in voluntarily. A letter is generated to all defendants for whom a bench warrant is ordered. (Appendix III-B is a copy of this letter.) For those who do not return, the Warrant Division proceeds to the next step, which depends on the assigned priority.

Priority one warrants are kept in the Warrant Squad for apprehension. A strong effort is made to bring in felony fine defaulters, who are accorded identical priority with felony defendants awaiting trial. This is consistent with what Supreme Court general clerks reported: the Warrant Squad goes out to get felons who miss fine payment dates.

Priority two warrants are sent to the precincts where defendants supposedly reside or possibly work. It is the Precinct Com-

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<sup>71</sup>Refer to Part I, Section 4.

mander who has the discretion to determine the priority given warrant service within the context of all other precinct work. Discretion also bears on method (i.e., a telephone call or visit to the home), and the order upon which these warrants are acted. Some precincts have Police Officers assigned only to apprehend defendants with warrants. In others, Police Officers will take a few warrants in their patrol car and stop by the house in the course of their travels. If the defendant has moved, the investigation ends. But some effort is made for almost every arrest-case warrant. Precincts have seventy-five days in which to conduct this investigation; if they have not located the defendant, the warrant is returned to the Warrant Division.

Regarding priority two warrants, the Executive Officer estimated that the letters bring in over one-third of the recipients, and that the precincts bring in thirty-five to forty percent of the warrants. This suggests that close to two-thirds of the warrants are cleared by these two methods. According to Criminal Court term statistics produced by the Office of Court Administration for New York City Courts, the return rate is eighty-four percent. While this pertains to cases in all stages of processing, it is reasonable to believe that the rate for the defaulters will be similar to the overall caseload.

Failure to pay a summons fine results in a priority three warrant. No action is taken on these except for selected cases in which issuing agencies specifically request apprehension. Nonetheless, the Executive Office of the Warrant Division estimated that the computer-generated letter brings in forty percent of the violators.

This section makes it clear that the feeling that there is

little or no enforcement is a widespread misconception.

E. NEW YORK CITY DEPARTMENT OF CORRECTION

Based on Fines Project sample sentence statistics, 12% of fined offenders (70 out of 601) have the jail alternative imposed.<sup>72</sup> This almost always occurs after a warrant has been ordered and executed. Only a handful are sent to jail who did not incur a warrant for the instant case. Jail is statutorily intended to compel compliance, but in practice becomes a substitute if served in its entirety.<sup>73</sup>

The New York City Department of Correction (DOC) does not keep any statistics on the number of offenders it receives for nonpayment of fines. A DOC researcher was able to provide some sample data that he developed. Before presenting them here, however, a few points should be made about what happens when a judge says, "Execute sentence," thus imposing the jail alternative.

First, it is the belief throughout the system that very few offenders are committed solely for nonpayment. Most are thought to be rearrested on a new case, cannot make bail, and so they concurrently serve the time (in detention) in lieu of the fine (which is usually a shorter period), and save the money. Cynical observers have noted that when this happens, the offender is getting a free ride on the fine case. Yet it may be that lower, or no, bail would have been set on the new case if the defendant had a better court appearance and fine payment record; thus the defendant may well be paying a steeper price for the subsequent arrest.

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<sup>72</sup>See Part I, Section 4.

<sup>73</sup>See Part I, Section 1.

This type of commitment does not preclude fine payment at the DOC facility. Unfortunately, there are no figures to show how many pay after commitment. A total of \$207,417 was collected in 1980 by DOC.<sup>74</sup> Based on Fines Project data that fines are about one hundred dollars on the average, this would represent about 2,000 cases (out of roughly 3,500).<sup>75</sup> This assumes that all monies were for Criminal Court fines. Based on field work in Supreme Court, Vera researchers believe that felony offenders are better payers and that few are ever committed for default, so this assumption seems fairly safe.

The most interesting fact about the money collected by DOC is that forty percent was paid at the New York City Correctional Institute for Women. The majority of these offenders are prostitutes, to whom judges would be less likely to extend further adjournments after the first return on warrant.

Given the picture above, about five percent of fined offenders end up serving the jail time instead. This comes to roughly 1,500 persons per year who were sentenced to fines in Criminal Court but served the jail time instead. It must be remembered that these are for short terms, not exceeding ninety days for misdemeanors, and are usually of much shorter duration. However, it is likely that many defendants remain in longer due to inability to make bail on their new cases.

The DOC researcher who provided the statistics below said the number of beds that could be freed up if fine defaulters were not

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<sup>74</sup>Department of Correction, City of New York, Statistical Tables (1080), Table 16.

<sup>75</sup>Based on the Fines Project sentence sample, seventy offenders received the jail alternative in one week. This is projected to 3,500 for the year. See Part I, Section 4.

committed is too low to be significant. Statistics support this contention. The sample was ten percent of all single-case admissions in October 1980 (Criminal and Supreme Courts, pre-disposition detention as well as sentenced offenders). Single-case admission refers to defendants with only one case, not more than one due to rearrest. Out of 532 single-case admissions, there were 30 (6%) for fine defaults only (i.e., offenders without accompanying new cases for which bail was not made). These aggregate data are of less interest than breakdowns by sex: while 1% of the 413 males were in for fines, 21% of the 119 females were defaulters. Projecting these 30 offenders onto the entire correctional population for the entire year, there were about 3,600 defaulters. There is a discrepancy between this projection, based on the DOC single-case admissions, and the Fines Project estimate of 3,500 jailed for default. The Fines Project sample included all defaulters, including those with rearrests. If multiple-case fine defaulters were added to the estimate based on DOC data, it would bring that figure a good deal higher than the court data. There appears to be no logical, operational explanation for the inconsistency. These statistics are derived from samples and projections, and as such they are prone to error. Yet they are useful because they do introduce some perspective on the use of the jail alternative.

#### E. FISCAL AGENCIES

The Vera analyst contacted officials of the City and State Comptrollers' Offices, the City Department of Finance, and the City's Office of Management and Budget with regard to fine revenue.

All fines, except those for certain Vehicle and Traffic Law offenses, go to the New York City General Fund. Section 23 (3) of the New York City Criminal Court Act states that monies are to be turned over to the Commissioner of Finance on the fifth day of the following month. Monies are turned over twice a month, however. This is a long-standing policy that allows the City to receive the fairly large amount of money about two weeks early and does not impose a great deal of additional paperwork on Criminal Court staff.

There seems to be another law for the rest of the state that requires monies to be turned over to localities within forty-eight hours. New York, Bronx, and Richmond Supreme Court clerks bring money to respective County Clerks, who turn it over to the City promptly. In Kings and Queens, there is a lag of some days before court staff write a check directly to the City. Apparently the amounts are too low for the Department of Finance to want to incur the administrative cost of daily transactions.

The Vehicle and Traffic Law has a complicated system of determining which monies go to the City and to the State. It is based on the offenses themselves and whether the roads are City or State roads. If a summons is issued, the officer indicates whether the City or State is to get the money. The cashiers' office has lists for non-summons cases. The fines that the State keeps go directly into the State Treasury. The money the City eventually gets is deposited into a State Justice Fund, from which quarterly disbursements are made to the local jurisdictions where

the infractions occurred. Fines revenues are not earmarked for any special purpose.

Since the State court unification on April 1, 1977, the City has discontinued auditing. At that time, the State began to review all courts throughout the state, and its stated goal is to audit on a three-year cycle.





PART I APPENDICES

VERA INSTITUTE OF JUSTICE

FINES PROJECT/N.Y.C. COMPONENT

CRIMINAL COURT JUDGES INTERVIEW

Judge \_\_\_\_\_

Date \_\_\_\_\_

Fart/County \_\_\_\_\_

1. How often do you have a presentence report at the time of sentencing?  
(Probe re types of cases that judge has report for)

When you have the report, how important is it in your sentencing decision?

Do you confer with the probation officer who prepared the report?  
\_\_\_ Often      \_\_\_ Sometimes      \_\_\_ Rarely

How often do you sentence according to probations's recommendation?  
\_\_\_ Often      \_\_\_ Sometimes      \_\_\_ Rarely

When you depart from their recommendation, what would the reasons be?

2. How often does the ADA recommend a sentence?  
\_\_\_ Often      \_\_\_ Sometimes      \_\_\_ Rarely

What sentences do they most frequently recommend?

Under what circumstances do you follow the ADA's recommendation?

Do they ever try to get you to use or avoid fines in any cases?

3. What other information do you use in making the sentence decision?  
(Probe: statement by defense counsel)

Judge \_\_\_\_\_

4. Given the range of sentence options, including combinations, how do you rank the fine in terms of severity?
5. When you impose a fine, what sentencing goal are you trying to achieve in terms of punishment, rehabilitation, retribution, or individual or general deterrence?
- \_\_\_ Punish    \_\_\_ Rehabil.    \_\_\_ Retrib.    \_\_\_ Ind.Deter.    \_\_\_ Gen.Deter.

6. What types of offenders or offenses are you most likely to fine and not fine?      When do you prefer to use jail, probation, and conditional discharge?

7. Do you ever use fines for violent crimes?      \_\_\_ Yes      \_\_\_ No

Judge \_\_\_\_\_

LEAA PRIVILEGED

8. When do you prefer probation to a fine?

9. Do you ever use fine with probation?  Often  Sometimes  R

With conditional discharge or jail?

When you use fine with probation, are you using probation as a method of fostering payment?  Yes  No

10. How do you define indigence?

11. How do you determine if a defendant is indigent? That is, what sources of information do you use? (Probe: accuracy)  
(If AR part, probe re determining indigency for public counsel.)

12. What type of information on the offender's means is on the presentence report?

13. Do you ever question the defendant directly about his or her means?  Often  Sometimes  Rarely

What sort of questions do you ask? (Probe: job, dependents, expenses)

Do you believe that they are generally honest in their answers?  Yes  No

Judge \_\_\_\_\_

14. How does an offender's indigency affect your use of the fine-- do you still fine and at what amount?

What sentences do you use instead?

Do you feel they are satisfactory and equitable treatment of indigents?

15. Do you think that anyone can pay a fine if it is set low enough and installments are allowed?  Yes  No

16. Aside from indigency, how do you determine the amount of fine in each case?

17. According to Article 80 of the Penal Law, the maximum fine may be limited by the offender's gain from a property crime. Do you use this provision frequently?  Often  Sometimes  Rarely

For what sort of cases?

How do you determine the amount of gain? (Probe: the amount of property may not equal the amount of gain.)

18. Does sentence bargaining affect the amount of fine? (That is, is the fine amount negotiated?)  Often  Sometimes  Rarely

Judge \_\_\_\_\_

LEAA PRIVILEGED

19. What would you say are some of your typical fine amounts? For example, do you have certain amounts you usually use for certain types of offenses?

20. If adjourned to pay, how do you determine the amount of time or whether to use installments? (Probe: terms of installments)

21. Do you have any idea of the percentage of your sentences that are fines?

22. Would you use fines less if there were more jail space available with satisfactory conditions?  Yes  No  Not applicable

23. Would you use fines less if probation officers had lighter caseload and could give closer supervision?  Yes  No  Not applicable

24. Would you use fines less if community service sentences were available?  Yes  No  Not applicable

For poor offenders in particular or would you use it irrespective of means?  Poor  All

25. In your experience, do judges tend to set some amount of cash bail at arraignment with an eye toward insuring money sort of being in escrow for fine payment if the defendant appears to be a possible candidate for a fine?

26. When you sentence to a fine, do you consider the likelihood of default and that a warrant will be issued?  Yes  No

(If yes) Would you still fine?  Often  Sometimes  Rarely

(If yes) Why?

Judge \_\_\_\_\_

LEAA PRIVILEGED

27. What happens to the offender who fails to come in to pay?

28. When you are in arraignments, do you ever attempt to find out if there are outstanding warrants for nonpayment in the event that you don't have a rap sheet? (Probe re circumstances)  
 Often       Sometimes       Rarely       Never

29. When an offender who failed to pay is brought in, how do you handle it? This would be for a new arrest or involuntary return.

Do you use the jail alternative?

Do you resentence?

To what?

Ever to a lesser fine amount?

If jail, how much jail time?

In fact, when you sentence to a fine, do you always specify a jail alternative?       Yes       No

How do you arrive at that jail time amount?

30. If the offender returned voluntarily, for example, claiming he or she was sick or forgot, do you treat him or her more leniently? (Probe: in what way?)

Would you use the jail alternative?

Would you resentence?

To what?

Judge \_\_\_\_\_

LEAA PRIVILEGED

-7-

31. What do you do with the offender who does come in, but tells you that he or she can't pay now or in the future?

32. Do you use restitution, and if so, how?

\_\_\_ Predisposition                      \_\_\_ Sentence

33. Let's talk about restitution as a sentence.  
Would you use any form other than money, for example, return of property or some sort of service?

34. Do you ever use it for personal injury or trauma?  
                    \_\_\_ Sometimes                      \_\_\_ Rarely                      \_\_\_ Never

35. When you use restitution, what is your primary objective--to compensate the victim or to rehabilitate the offender?  
                    \_\_\_ Comp. Victim.                      \_\_\_ Rehabil. Offender

36. Do you impose restitution on indigents?

To what extent is means a factor in determining the amount?  
(Probe: suppose the offender can partially compensate the victim?)

37. How do you follow up on whether restitution is paid?



Judge \_\_\_\_\_

LEAA PRIVILEGED

38. Do you use it as a conditional discharge as well as probation?  
 Yes  No

Do you ever use it with a fine?  Sometimes  Rarely  Never

When would you be more likely to use restitution instead of a fine?

39. How do you handle default?

40. Do you think fines are used so frequently because they are relatively easy to administer?  Yes  No

41. Do you think fines are used so frequently because they are relatively inexpensive to administer?  Yes  No

42. Do you think that the system uses fines as a way to move cases?  
 Yes  No

43. What do you think of the idea of a fixed exchange rate of dollars and days for fine default?  Likes it  Doesn't like it

44. Generally speaking, do you think judges have any real interest in whether fines are collected?

45. Do you have any ideas about how the collection rate could be improved?

Judge \_\_\_\_\_

LEAA PRIVILEGED

MISC. COMMENTS

Judge's background:    \_\_\_ LA    \_\_\_ ADA    \_\_\_ Other

How long on bench \_\_\_\_\_

How often sit in arraignment part? \_\_\_\_\_

APPENDIX I-B

LEAA PRIVILEGED

VERA INSTITUTE OF JUSTICE

FINES PROJECT/NYC COMPONENT

INTERVIEW WITH BORO CHIEF CLERK  
CRIMINAL COURT

NAME \_\_\_\_\_ COURT \_\_\_\_\_ DATE \_\_\_\_\_

Tell BCC that this is for arrest cases only.

1. (a) How are summonses marked on the calendar to distinguish them from arrest cases?

(b) If they are not disposed at arraignment, which AP part do they go to--whichever is on intake or a separate part?

2. Given the range of sentence options, how do you rank the fine in terms of severity?

3. Does conditional discharge have any teeth in this county?

4. (a) For what kinds of offenses or offenders do you think fines are the most appropriate sentences?

(b) Are fines ever appropriate for violent crimes?       yes       no

5. (a) Are DATs usually given for fare beats?        yes        no
- (b) Do you have any sense of the percentage who don't bother to come to court?
- (c) Are fare beats usually 140.05 (trespass) or 165.15 (theft of service)?
6. (a) What would you say are the most common fare beat sentences? (Probe: % Fine, % TS or short jail)
- (b) How much would you estimate is the average fare beat fine?
- (c) What would you say are the most common prostitution and loitering for prostitution sentences?
- (d) How much would you estimate is the average prostitution fine?

PAYMENT AND DEFAULT

7. Describe the procedure of an offender paying the fine.  
(Probes: If adjourned, go to courtroom or somewhere else?  
Accompany UCO to cashier? Does receipt indicate balance  
due if adjourned for further payment?)

8. What are the mechanics of applying cash bail?  
(Probes: How does offender know it can be used? Does judge  
have to approve?)

9. Is the court paper the record used by judges, UCOs, and court  
clerks to know who paid how much?

\_\_\_\_\_ yes                  \_\_\_\_\_ no

10. Describe warrant procedure for failure to come in to pay.  
How long does it take for paperwork to be done and for the  
warrant to get to the Warrant Squad?

11. When offenders fail to come in to pay, what do you think is the reason--they have no money, they don't care, they forget?
  
12. Under what circumstances will a warrant be stayed?
  
13. When there is a new arrest, how does the bridgeman or judge know if there are outstanding warrants to pay a fine on an old case? (NYSIID or Warrant Squad search through its own fines? Does Warrant Squad get nonprintables?)
  
14. Re Queens execution of out-of-county warrants:
  - (a) Queens: Discuss reason, how Queens reconciles fines collected, how notify original county
  - (b) Other counties: What problems are caused?
  
15. Do you know how many outstanding warrants there are in the county?
  
16. Do you know how many or what percentage are for failure to pay a fine?

17. What do you think happens to most people who default--do they come back on a new arrest, does the Warrant Squad get them, or do they never return because they stay out of trouble?
18. What do the judges here usually do with the offender who is returned for willful failure to pay?
19. (a) What do the judges usually do with the offender who comes in but says he or she has no money and cannot pay now or ever? Do they resentence? To what?
- (b) Would they ever resentence to a reduced fine amount--the amount already paid?

RECORDS AND PERSONNEL

20. (a) What records are kept of fines paid (e.g., cash book)?
- (b) How are summons fines separated from arrests?
- (c) Are there separate records for City and State fines?

\_\_\_\_\_yes \_\_\_\_\_no

21. When court costs are levied, how do you keep track of them?
22. How often do the City and State audit your records?
23. (a) How many personnel are involved in finer collection?  
(Probes: full and part time, titles, different tasks)
- (b) Since they are handling money, do you take security measures in selecting them?
24. What is the title of the person who supervises fines collection?
25. Do the people who collect fines also collect transcript and subpoena fees and court costs?
26. What is the total number of nonjudicial personnel in this county?
27. (a) How often is the money brought to the bank?
- (b) What is the title of the person who brings it?



ADMINISTRATIVE ISSUES

28. What are the problems, if any, in the handling of fines monies?
29. Are there any opportunities for personnel to steal fines money?
30. What are the advantages and disadvantages of fines as a sentence?
31. What percentage of sentences do you estimate are fines?
32. Do you think that the system uses fines as a way to move cases?  
\_\_\_\_\_yes \_\_\_\_\_no
33. Do you think anyone cares if fines are ever paid?  
\_\_\_\_\_yes \_\_\_\_\_no
34. Do you think that fines could be used in more cases or are they used too often, that is, inappropriately?
35. Can you make any suggestions to improve the payment rate?

VERA INSTITUTE OF JUSTICE  
FINES PROJECT-  
TELEPHONE SURVEY OF  
OFFENDERS FINED IN N.Y.C.

APPENDIX I-C

Interview # \_\_\_\_\_

Date \_\_\_\_\_

Interviewer \_\_\_\_\_

Hello. This is \_\_\_\_\_ from the Vera Institute of Justice. We are an organization that has done a lot of work to try to improve the way people are treated in the criminal courts. We are doing a survey of how people feel about getting sentenced to pay a fine, and we know from court records in N.Y.C. that you were fined back in \_\_\_\_\_ (date).

We hope you are willing to answer a few questions for us over the phone. Everything you tell us will be confidential. The purpose of the survey is to learn what goes on when people are given fines to pay. We will be telling the courts the general results of this survey, but will not be telling them what particular people said. May I go ahead and ask you the questions?

[IF NO, NOTE REASON, THANK PERSON, AND END CALL.]

[IF YES, PROCEED WITH INTERVIEW.]

We are interested in the \_\_\_\_\_ fine you received on \_\_\_\_\_ (amount)  
\_\_\_\_\_ (date)

You pleaded to \_\_\_\_\_ (charge)

Do you remember that sentence? Yes \_\_\_\_\_ No \_\_\_\_\_

[IF NO, THANK PERSON AND END CALL.]

ALL

- 1. Did you think that a fine was a fair sentence in your case?  
(Probe: Did you resent having to pay a fine or were you glad that the judge didn't put you in jail?)

Fair\_\_\_ Unfair\_\_\_

- 2. Did the judge or your lawyer ask you whether you could afford to pay the amount set or how much you could afford to pay?

Yes\_\_\_ No\_\_\_ Don't recall\_\_\_

- 3. How do you think the judge decided about how much your fine would be?

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- 4a. Were you working at a job at the time you were fined?  
(Probe: was it a steady, full-time job?)

F/T steady\_\_\_ Other (specify)\_\_\_ no job\_\_\_  
Don't recall\_\_\_

- b. Did the judge know that?

Yes\_\_\_ No\_\_\_ Don't recall\_\_\_

PAID-  
NO WARRANTS

5. Did it seem fairly easy to pay what you did? (Probe: Did paying the fine cause any hardship to you or your family? Did you have much trouble getting the money together?)

Relatively easy\_\_\_ Relatively difficult\_\_\_

[IF ADJOURNED TO PAY.]

- 6a. What did you think would happen if you failed to come to court when a fine payment was due?

\_\_\_\_\_  
\_\_\_\_\_

- b. What was it that got you to pay your fine?

\_\_\_\_\_  
\_\_\_\_\_

[IF PAID ON DATE SENTENCED, AND HAD D.A.T. OR ADJOURNMENT]

7. Did you come to court with money on the day you pleaded guilty?

Yes\_\_\_ No\_\_\_

8. Had your lawyer told you that you would probably be fined?

Yes\_\_\_ No\_\_\_

PAID IN FULL-  
WARRANT(S)

9. Did it seem fairly easy to pay what you did? (Probe: Did paying the fine cause any hardship to you or your family? Did you have much trouble getting the money together?)

Relatively easy\_\_\_ Relatively difficult\_\_\_

- 10a. As far as the court records show, you missed \_\_\_\_\_ payment date(s) and came in at a later date. (number)  
Why did you miss those dates/that date?

\_\_\_\_\_  
\_\_\_\_\_

- b. What was it that got you to come back to court, even though it was late? (Probe: warrant served, new arrest, conscience) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

- c. What was it that got you to pay your fine? (Probe: threa of commitment, actual commitment) \_\_\_\_\_

\_\_\_\_\_

11. Were you told about how to make payments:

- a) for instance, where to go? Yes \_\_\_ No \_\_\_
- b) when payments were due? Yes \_\_\_ No \_\_\_
- c) whether someone else could come in to pay for you? Yes \_\_\_ No \_\_\_

12. Did you know that the court would probably give you more time to pay as long as you showed up on the scheduled date?

Yes \_\_\_ No \_\_\_ Don't recall \_\_\_

[IF MADE PARTIAL PAYMENT]

13. Did it seem fairly easy to pay the \$ \_\_\_\_\_ that you paid?

Relatively easy \_\_\_ Relatively difficult \_\_\_

14a. As far as the court records show, you missed \_\_\_\_\_ payment date(s) and came in at a later date. (number) Why did you miss those dates/that date?

\_\_\_\_\_  
\_\_\_\_\_

b. Were you aware that a bench warrant had been issued and that if you were arrested for a new incident, you could have to appear for this old case?

Yes \_\_\_ No \_\_\_

[IF RETURNED TO COURT]

15. What was it that got you to come back to court, even though it was late? (Probe: warrant served, new arrest conscience) \_\_\_\_\_

\_\_\_\_\_

16. [ONLY IF COMMITTED]

When the judge sent you to jail, did you serve the time or did someone come up with the money?

Jail \_\_\_ Paid \_\_\_

[IF NOT PAID IN FULL AND STILL OUT ON WARRANT]

17. As far as the court records show, you never paid out your fine. Why was that? \_\_\_\_\_

\_\_\_\_\_

LL

18a. Do you think this sentence had any effect on you in the long run?

Yes \_\_\_ No \_\_\_

b. [IF YES] What effect? (Probe: deter, punish)

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c. [IF NO] Did you feel you had been punished?

Yes \_\_\_ No \_\_\_

19. Thank you very much for your time. You have been very helpful to this survey.

VERA INSTITUTE OF JUSTICE  
FINES PROJECT--N.Y.C.--1981

APPENDIX I-D

CODING SHEET

1. County/Court	(1)	-
2. Control #	(2-4)	- - -
3. Primary record	(5)	-
4. Age	(6-7)	- -
5. Sex	(8)	-
6. Counsel	(9)	-
7. AR charge:		
a. Attempt	(10)	-
b. Statute	(11-15)	- - - - -
c. Type	(16)	-
d. Class	(17)	-
8. Conviction charge:		
a. Attempt	(18)	-
b. Statute	(19-23)	- - - - -
c. Type	(24)	-
d. Class	(25)	-
9. Classes reduced	(26)	-
10. PG/FG	(27)	-
11. Resentence?	(28)	-
12. YO?	(29)	-
13. Sentence	(30-31)	- -

14. Fine amount	(32-36)	- - - - -
15. Jail alt.:		
a. Time unit	(37)	-
b. Amount	(38-40)	- - -
(NOTE. Columns 41 - 70 will be blank for Supr. Ct. cases)		
16. Payment status	(41)	-
17. Adjmt. history:		
a. Calendared	(42-43)	- -
b. Payments	(44-45)	- -
c. No action	(46-47)	- -
d. WO	(48)	-
e. Other action	(49)	-
18. One-year status	(50-51)	- -
19. Action--ROW	(52)	-
20. Resentence	(53-54)	- -
21. Reduced fine	(55-58)	- - - - -
22. Reduced--status	(59)	-
23. Amount collected	(60-63)	- - - - -
24. Amount uncoll'd.	(64-67)	- - - - -
25. Days--paid	(68-70)	- - -
26. Employed	(71)	-
27. Prior arrests	(72-73)	- -
28. Similar arrests	(74)	-
29. Prior fel.conv.	(75-76)	- -
30. Prior M/V conv.	(77-78)	- -
31. Rearrest	(79)	-

(NOTE. Columns 32 - 70 will be blank if no fine)

APPENDIX I-E

VERA INSTITUTE OF JUSTICE  
FINES PROJECT--N.Y.C.--1981

CODING GUIDE

<u>Description</u>	<u>Code</u>	<u>Field Size</u>	<u>Card Columns</u>
1. County/Court	1 NY Crim. 2 Bx " 3 K " 4 Q " 5 R "	1	1
2. Individual identifier	(Control number)	3	2-4
3. Primary record code	0 No (multiple records) 1 Yes--only record 2 Yes--multiple records 9 Don't know	1	5
4. Age at arrest	(Age) 99 Don't know	2	6-7
5. Sex	1 Male 2 Female 9 Don't know	1	8
6. Counsel	1 LA 2 18-B 3 Private 4 Self 9 Don't know	1	9



<u>Description</u>	<u>Code</u>	<u>Field Size</u>	<u>Card Columns</u>
7. Top arrmt. charge: (Use arrest charge if no dckt'd. charge is shown.)			
a. Attempt	0 No 1 Yes 9 Don't know	1	10
b. Statute	(PL statute) 66666 VTL (except 1192) 77777 VTL 1192 88888 Other non-PL 99999 Don't know	5	11-15
c. Offense type	1 Theft, CPSP, unauth.use car      6 Trespass 2 Assault            7 Drugs 3 Pros.                8 VTL 4 Gambling            9 Don't know 5 Dis.con., loit.     0 Other	1	16
d. Class	8 AF                    3 AM 7 BF                    2 BM 6 CF                    1 V & VTL Infr. 5 DF                    0 Unclass. M 4 EF                    9 Don't know	1	17
8. Conviction charge:  (Same codes as arrmt. charge)		8	18-25
9. # classes reduced	(Subtract 8d from 7d) 8 Not applicable 9 Don't know	1	26

<u>Description</u>	<u>Code</u>	<u>Field Size</u>	<u>Card Columns</u>
10. PG/FG	1 PG 2 FG 9 Don't know	1	27
11. Is this a resentence?	0 No 1 Yes--original sent. was fine 2 Yes--original sent. was not fine 9 Don't know	1	28
12. Is this a YO?	0 No 1 Yes 9 Don't know	1	29
13. Sentence imposed in sample week	11 Fine 12 Fine & Prob. 13 Fine & CD 14 Fine & Jail 15 Fine & Jail & Prob/CD 16 Jail 17 Jail & Prob. 18 Jail & CD 19 Time Served 20 Prob. 21 CD 22 UD 23 Int. Impr. 24 Other 99 Don't know	2	30-31
NOTE. If sentence is not a fine, columns 32 - 70 will have 8's.			
14. Fine amount	(amount) 99999 Don't know	5	32-36
15. Jail alternative: a. Time unit	1 Days 2 Months 3 Year 9 Don't know-- time not specified 8 Not applic.--jail not author. for the charge	1	37
b. Time amount	(amount) 999 Don't know 888 Not applic.--jail not author. for charge	3	38-40

Description	Code	Field Size	Card Columns
16. Payment status on date sentence imposed or resentenced in sample week	1 Paid in full 2 Cash bail to be used 3 Partial payment 4 Adjourned 5 Resentenced to reduced fine amount and paid in full (Last payment on this or previous date) 6 Resentenced--adjourned 7 Other--jail alt., check bounce 9 Don't know	1	C 41
17. Adjournment history for one year after sent'd.: (If item 16 is coded 1, 2, or 5, fill in this field with 8's.)			
a. # dates calendared thru date paid in full or otherwise terminated or end of one year	(number--must equal sum of 17b to 17e)	2	42-43
b. # dates a payment is made (full or part)	(number)	2	44-45
c. # dates adjourned--no payment, warrant, or other action, cash bail to be used	(number)	2	46-47
d. # dates warrant ordered	(number)	1	48
e. # dates exec. sent. (jail), resentenced, or other action	(number)	1	4

<u>Description</u>	<u>Code</u>	<u>Field Size</u>	<u>Card Columns</u>
18. Status one year from date sentenced or resentenced	<u>No warrant:</u> 10 Paid in full--one or more payments 11 Partially paid--balance outstanding 12 Exec. sent.--jail 13 Resentenced 14 Other (e.g., disp.)  <u>Warrant ordered:</u> 15 Still out on warrant 16 ROW--paid in full 17 ROW--partially paid--balance outstanding 18 ROW--exec. sent.--jail 19 ROW--resentenced 20 ROW--no payments at all, either before or after warr. 21 ROW--other (e.g., disp.) 99 Don't know	2	50-51
19. Action on first ROW date	1 Execute sentence--jail 2 Paid in full 3 Partial payment 4 Adjourned--no action 5 Resentenced 6 Other--WO, disp., abated 8 Not applicable (No WO or ROW) 9 Don't know	1	52

<u>Description</u>	<u>Code</u>	<u>Field Size</u>	<u>Card Column</u>
20. Resentence within one year (If item 18 is coded 13 or 19, code new sentence. Otherwise code 88 here.)	11 Fine	19	Time Served
	12 Fine & Prob.	20	Prob.
	13 Fine & CD	21	CD
	14 Fine & Jail	22	UD
	15 Fine & Jail & Prob/CD	23	Int.Impr.
		24	Other
	16 Jail	88	Not applic.
	17 Jail & Prob.	99	Don't know
	18 Jail & CD		
21. Resentenced--reduced fine	(amount) 8888 Not applicable	4	53-54 55-58
22. Reduced fine--payment status one year from date of orig. sentence	1 Paid in full 2 Partially paid 3 No payments 4 Other 8 Not applicable 9 Don't know	1	59
23. Total amount collected within one year.	(amount)	4	60-63
24. Total amount uncollected at end of one year	(amount) Should be 0 if fine amt. was reduced and fine paid in full	4	64-67
25. Time until paid in full from date sentenced (maximum is one year)--in days (If item 18 is coded 10 or 16, code number of days. If item 22 is coded 1, code number of days from original fine imposed.)	(number of days) 000 Same day 888 Not applicable 999 Don't know	3	68-70

<u>Description</u>	<u>Code</u>	<u>Field Size</u>	<u>Card Columns</u>
26. Employed	1 Empl.F/T 2 Empl.P/T 3 Empl.P/T + School 4 School only	5 Does Nothing 9 Don't Know	1 71
27. # prior arrests (Prior to sample sent. date)	(number) 98 For 98 or more arrests 99 Don't know--no rap sheet		2 72-73
28. Prior arrests--similar offense?	0 No 1 Yes 8 Not applicable--no priors 9 Don't know--no rap sheet		1 74
29. # prior felony convictions (Exclude other convs. on sample sent. date)	(number) 88 Not applicable--no prior arrests 99 Don't know--no rap sheet		2 75-76
30. # prior misd. & viol. convictions (Exclude other convs. on sample sent. date)	(number) 88 Not applicable--no prior arrests 99 Don't know--no rap sheet		2 77-78
31. Rearrest within one year of date sentenced?	0 No (have rap sheet) 1 Yes (have rap sheet) 9 Don't know--no rap sheet		1 79

PART II APPENDICES

APPENDIX II-A

VERA INSTITUTE OF JUSTICE  
Fines Project/NYC Component  
Supreme Court Judges Interview

Judge \_\_\_\_\_

Date \_\_\_\_\_

Part/County \_\_\_\_\_

Anonymity

1. How do you go about making the sentencing decision? That is what factors do you consider, such as the offense itself or offender characteristics?
  
2. How does the presentence report influence your decision?
  
3. Do you confer with the probation officer who prepared the report?  

\_\_\_\_\_ yes      \_\_\_\_\_ no
  
4. Under what circumstances do you tend to favor or avoid the various sentences (prison, jail, probation, conditional discharge, fine combinations)?
  
5. Given the range of sentence options, how do you rank the fine-only sentence in terms of severity?



Judge \_\_\_\_\_

page 2

6. If you ever do use a fine for a felony, what sentencing goal would you be aiming for? (punishment, individual or general deterrence, rehabilitation, retribution)
  
7. Are there circumstances when you prefer to fine? Are fines ever appropriate for violent crimes? (Probe: If someone could afford very high fine)
  
8. Discuss fine in combination with probation, CD or jail.
  
9. Why don't you use fines more? (Probe: indigency, collection problems--offender would not come in to pay, idea of fines for serious crimes is offensive.)
  
10. Discuss issue of indigency. Would you use fines more if offenders could afford to pay higher fines?
  
11. How do you define indigency?
  
- 12a. How would you determine if an offender is indigent? What sources of information would you use? (PSI, other)
  
- 12b. What percentage are indigent?

Judge \_\_\_\_\_

page 3

13. What about using fines for offenders who put up cash bail?  
Do many offenders put up CB?
  
14. On the few occasions when you do fine, how do you arrive at amount? (PSI recommendation or means information? ask offender?) How do you arrive at alternative jail time? (one year maximum for felonies)
  
15. (a) How much time do you give to pay? Do you ask offender what he/she needs?  
  
(b) Do you specify terms, e.g., \$50 a month, or let offender work it out with clerk?  
  
(c) How much time is excessive?
  
16. What do you do if an offender comes to you saying he/she can't afford to pay? Do you reduce fine? Give more time? Resentence to something else?
  
17. What do you do with offender who willfully defaults?  
Impose jail alternative? Resentence?--to what?

-How much default is willful, i.e., ofdr. does not care or deliberately tries to evade paying, and how much is due to indigen

Judge \_\_\_\_\_

page 4

18. Do you use restitution in your sentences?

\_\_\_yes \_\_\_no

19. As part of probation or something else?

-Probation

-Conditional discharge

20. Money restitution or something else, e.g., property or community service?

-Money

-Property

-Community service

21. Is the offender's means a factor in your decision to impose restitution?

\_\_\_yes \_\_\_no

22. How do you follow up on whether it is made?

23. How do you handle default on restitution?

Judge \_\_\_\_\_

page 5

24. Do you get any corporate defendants?

\_\_\_\_yes \_\_\_\_no

25. (If yes to #20) What sentences do you use?

26. What are the collection problems with corporations?

Misc.

Judges background:

\_\_\_\_\_LA

\_\_\_\_\_ADA

\_\_\_\_\_Other:

How long a judge?

VERA INSTITUTE OF JUSTICE

Fines Project/ NYC Component

Interview with Supreme Court General Clerks

Name \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

1. (a) For what kinds of offenses or offenders do you think fines are the most appropriate sentences?

(b) Are fines ever appropriate for violent crimes?

\_\_\_\_\_ yes \_\_\_\_\_ no

2. What sentence goal do fines used alone achieve, e.g., in terms of deterrence, rehabilitation, punishment?

3. Describe the procedures for paying a fine for immediate payments and adjournments. (Probes: Immediate, accompanied by UCO to cashier? Adjournment slips. If adjourned, go to part or cashier? Adjournment slips? Does receipt or adjournment slip show balance due and date due?

Name \_\_\_\_\_

page 2

4. Are almost all fines paid in installments? Does judge or a court clerk set terms? Does clerk (cashier) have authority to extend beyond due date set by judge if offender request more time? Will a judge give as much time as asked as long as offender makes an effort to pay?
5. What are the mechanics of applying cash bail? (Probes: How does offender know it can be used? Does judge have to approve?)
6. If an offender fails to come in to make a payment, does the court send out a warning or reminder letter?
7. Describe warrant procedure for failure to come in to pay. How long does it take for paperwork to be done and for the warrant to get to the Warrant Squad? What would warrant squad priority be?
8. When offenders fail to come in to pay, what do you think is the reason--they have no money, they don't care, they forget?
9. Do you know how many or what percentage of fined offenders fail to pay on time or at all?

Name \_\_\_\_\_

page 3

10. What do you think happens to most people who willfully default--do they come back on a new arrest, does the Warrant Squad get them, or do they never return because they stay out of trouble?
11. What do the judges here usually do with the offender who is returned for willful failure to pay? Impose jail alternative? Resentence? To what?
12. (a) What do the judges usually do with the offender who comes in but says he or she has no money and cannot pay now or ever? Do they resentence? To what?
- (b) Would they ever resentence to a reduced fine amount--the amount already paid?

RECORDS AND PERSONNEL

13. (a) What records are kept of fines paid (e.g., cash book)?
- (b) Are cash bail and fees paid at same place?
- (c) How many bank accounts are there? i.e., separate accounts for city and state money? for cash bail?
14. (a) How often is the money brought to the bank?
- (b) What is the title of the person who brings it?
15. How often is money sent to city and state? Addressed to whom? (i.e., Dir. of Finance) What forms are used?

Name \_\_\_\_\_

page 4

16. Do you know how much was collected in fines for 1980?  
How much was imposed? What is estimated payment rate?
  
17. Are court costs ever used? Why/why not? Would there be any rationale, e.g., for people imprisoned?
  
18. How often do the City and State audit your records?  
Does anyone else audit?
  
19. (a) How many personnel are involved in finer collection?  
(Probes: full and part time, titles, different tasks)
  
- (b) What is the title of the person who supervises fines collection?
  
- (c) What is the total number of nonjudicial personnel in this county?



Name \_\_\_\_\_

page 5

20. What modes of payment are accepted?

\_\_\_\_\_ cash    \_\_\_\_\_ money order    \_\_\_\_\_ personal check  
\_\_\_\_\_ credit card    \_\_\_\_\_ mail payments

21. Discuss potential for credit cards: Do these people have credit cards? Would it be easier for court if it didn't have to do the bookkeeping?

22. What are administrative problems of collection:

23. Can you make any suggestions to improve the payment rate?

24. Advantages and disadvantages of fines.

PART III APPENDICES

VERA INSTITUTE OF JUSTICEFINES PROJECT/NYC COMPONENTINTERVIEWS WITH LEGAL AID  
AND DISTRICT ATTORNEY'S OFFICES

NAME \_\_\_\_\_ COUNTY/OFFICE \_\_\_\_\_ DATE \_\_\_\_\_

(Tell respondent that questions apply primarily to Crim. Ct, where fines are used most.)

1. How severe is a fine compared with other sentence options?
2. (a) Is a CD a throwaway sentence, or does it have any teeth in this county?  
  
(b) Who is responsible for following up that the offender abides by the conditions?
3. What sentencing goal does a fine meet--punishment, individual deterrence, general deterrence, rehabilitation or retribution?
4. For what sort of charges or offenders do you think fines are the most appropriate sentence?
5. Are fines ever appropriate for violent crimes?
6. (For ADAs only)
  - (a) How often do ADAs recommend a sentence either as part of a plea bargain or after an I&S in Criminal Court?  
  
How often in Supreme Court? (Probe re written presentence memorandum)
  - (b) Do they ever recommend a fine?  
Criminal Court:  
  
Supreme Court:
  - (c) For what sort of cases?(For Legal Aid only)  
How often do you prepare a presentence memorandum for Supreme Court cases?  
  
Do you ever prepare one for Criminal Court cases?

7. Do you believe that fines are appropriately utilized in this county in Criminal Court or are they used too much?  Appropriate  Too much

Could they be used more?  Yes  No

(If yes) For what sort of cases?

Could fines be used more in Supreme Court?  Yes  No

8. (For Legal Aid only)

When a Legal Aid client is fined, is that regarded as a favorable outcome? (for example, as opposed to probation, to jail?)

#### INDIGENCY

9. Can anyone pay some fine if it's set low enough and there is time to pay?

Yes  No

10. Should an offender's indigency be a consideration in deciding whether to use a fine and in deciding the amount?  Yes  No

11. Should fines be discouraged or prohibited for indigent offenders?  Yes  No

12. Should fines be discouraged or prohibited if they are likely to cause hardship to the offender's dependents or family?  Yes  No

13. What do you think are the best alternative sentences for a person who is too poor to pay a fine without great hardship?

14. How do you feel about the offender having to borrow money from family or a friend to pay a fine?

15. Do you think that many of the theft and robbery type of crimes are committed because the offenders are needy? (Probe re shoplifting)

DEFAULT

16. What usually happens to the offender who willfully fails to pay a fine when he or she is returned to court?

Execute sentence       More time to pay       Resentenced

If resentenced, to what?

17. Do you believe that default is due to lack of money or disregard for the court or some other reason?       No money       Disregard       Other (Specify)

18. When an offender is returned to court for willful failure to pay, one possible outcome is execute sentence. Would it be fair to have a standard "exchange rate" for dollars and days?       Yes       No

MISC.

19. Do you think that judges use fines as an easy way to get cases off the calendar?       Yes       No

20. Do you think that fines would be used less if there were more space in jails with satisfactory conditions?       Yes       No

21. Do you think that fines would be used less if probation officers had lighter caseloads?       Yes       No

22. Do you think that fines would be used less if community service sentences were available?       Yes       No

23. Does anyone care if fines are ever paid?       Yes       No

(If yes) Who?

24. Do you believe that your responses represent a consensus of opinion for your office?       Yes       No

25. Do you think that your attitude toward fines use would be different if you were (an ADA/ a defense attorney)?       Yes       No