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MAY 15 1989

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Innovations in Collecting
and Enforcing Fines

by George F. Cole

In Tacoma, Washington, the Municipal Court uses a private tele-marketing firm to remind offenders to pay their fines. The Phoenix Municipal Court employs special coordinators who work with offenders to establish installment plans for payment of fines. In other jurisdictions, courts have created computerized systems to track offenders' payments and initiate collection action when needed.

The problem of collecting fines has traditionally been a serious drawback to widespread use of this sanction in punishing offenders. But as these examples show, some courts are turning to new approaches to fine collection, often with encouraging success. In fact, a 1984(?) survey of limited-jurisdiction courts conducted for the National Institute of Justice found some with collection rates as high as 95 percent.¹ And other researchers have found that Harris County (Houston) Criminal Courts have a collection rate of between 85 and 90 percent², while the Mont-

¹ Sally T. Hillsman, Joyce L. Sichel, and Barry Mahoney, Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction (Washington, D.C.: National Institute of Justice, 1984).

² Susan Darst Williams, "Fines and Fees Pay for Crime," Corrections Compendium 11 (January 1987):6.

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gomery County, Pennsylvania, Court of Common Pleas has a success rate of about 93 percent.³

These and other courts that are working to ensure collection use a variety of techniques to maintain records, remind offenders of their obligations and impose further sanctions on those offenders who fail to pay. Why are these courts successful while others are not? What impact do organizational context and sentencing structure have on effective collection and enforcement? What lessons can be learned to improve collection and give fines the weight and certainty they need to be an effective criminal sanction? This article explores these questions and highlights some of the efforts under way to grapple with the issues involved in collecting and enforcing fines.

THE JUDICIARY AND FINES ADMINISTRATION

The monetary sanction is the only form of punishment implemented mainly by the judiciary. For all other sanctions, the sentencing judge knows that another agency of government, usually in the Executive branch, is responsible for seeing that the terms of the court order are carried out. Incarceration is the responsibility of the sheriff or department of corrections. Community service orders are generally executed by community correctional agencies. And probation, although formally tied to the judiciary

³ Interview, July 18, 1988.

in many States, operates outside ongoing courthouse scrutiny. By contrast, the collection of fines and other monetary sanctions -- court costs, restitution, penalty assessments -- is primarily a judicial responsibility and is administered mainly by the court clerk's office.

However, many judges and administrators appear to be reluctant to recognize the courts' responsibility for collecting fines. Their attitude seems to be that the judge's job is to impose sentences but not to be involved in seeing that they are carried out. In some jurisdictions there is confusion as to who is actually responsible for collection and enforcement.

The problem of fine collection was emphasized by a national sample of trial court judges responding to a survey conducted by researchers from the University of Connecticut and the Institute of Court Management of the National Center for State Courts.⁴ Forty-seven percent of the general-jurisdiction judges and 61 percent of the limited-jurisdiction judges said their courts had a moderate or major problem collecting and enforcing fines. When asked to give reasons for fine collection difficulties in their courts, most judges pointed to characteristics or actions of the offenders as the primary cause. Upwards of two-thirds of the

⁴ George F. Cole, Barry Mahoney, Marlene Thornton, and Roger A. Hanson, Practices and Attitudes of Trial Court Judges Regarding Fines as a Criminal Sanction: Executive Summary (Washington, D.C.: National Institute of Justice, 1987),

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judges agreed with statements that many offenders think nothing serious will happen to them if they fail to pay their fines; that many offenders leave the area or are too hard to locate; and that many offenders are poor and cannot afford to pay their fines.

However, 38 percent of the limited-jurisdiction court judges and 40 percent of the general-jurisdiction court judges said that their courts own collection methods contributed to the non-payment problems. The most usually cited cause of non-payment was the low priority given to warrants for the arrest of delinquent payers by law enforcement agencies.

Another disincentive to effective fine collection is the fact that the funds collected by the courts are earmarked for other State or local agencies. In Virginia, for example, fines assessed for offenses against State laws are deposited in the Literary Fund to provide support for the construction and renovation of public school buildings⁵; Indiana requires that fines collected by general-jurisdiction courts go into a nonreverting school fund; Michigan, to support county libraries; Connecticut, to the State general fund.⁶ Limited-jurisdiction courts normally

⁵ Virginia Department of Planning and Budget, Unpaid Fines, Court Costs, and Restitution in District and Circuit Courts of the Commonwealth (Richmond, 1987).

⁶ Sally T. Hillsman, Joyce L. Sichel, and Barry Mahoney, Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction (Washington, D.C.: National Institute of Justice, 1987).

*Checked in short hand
Hillsman, Sichel, and Mahoney, Fines
in Sentencing*

send amounts received to the county or municipal revenue agency.

The effectiveness of the judiciary in collecting fines has important implications for the fine as a sanction and for the court as an institution. A fine is a court order. If it goes uncollected, the integrity and credibility of the courts are called into question in the eyes of the offender, the criminal justice system, and the community. If payments are not enforced, offenders may believe they have successfully "beaten the system." Because certainty of punishment is thought to be a major deterrent to criminality, it is possible that some individuals may take advantage of opportunities to commit other illegal acts if they believe that nothing will happen to them if they fail to pay a fine.

FINES AND THE SENTENCING PROCESS

The amount of the fine and the manner in which it is imposed have an obvious impact on its potential for collection. If the amount of the fine, together with court costs and assessments, is far beyond the means of the offender, the possibility of collection is slight. In recent years, many Legislatures have mandated that judges impose assessments such as probation supervision fees or levies that are to be paid to special-purpose funds (alcohol and drug education, law enforcement training, and the like). These laws have limited judicial discretion in setting a fine amount consistent with seriousness of crime and the means of the offend-

er. Furthermore, the potential for collection becomes nil when a mandated sentence requires a heavy fine combined with a prison term.

Effective use of fines also requires that judges have certain kinds of information available to them at the time of sentencing -- information now lacking for most cases. In the national survey of both general- and limited-jurisdiction courts noted earlier, judges said they were more likely to have information about the offender's criminal records and the circumstances of the offense than they were about the offender's family status, income, employment, and assets. For example, although 64 percent of the limited-jurisdiction judges said they had information about the offender's employment status in most or all cases, only 41 percent said they had information on the offender's income, and only 25 percent had information on the offender's assets in most or all cases.⁷ In the absence of this information, it is difficult to see how judges can effectively shape a viable economic sanction that will punish or deter yet still be within the capacity of the offender to meet.

THE ROLE OF THE JUDGE IN PAYMENT OF FINES

At the time of sentencing, the judge plays a crucial role in communicating to the offender the sanction being imposed. The

⁷ Cole, Mahoney, Thornton, and Hanson, Practices and Attitudes of Trial Court Judges Regarding Fines as a Criminal Sanction.

amount of the fine and the condition for payment (e.g., where and when it is to be paid, and the form of payment -- cash, check, money order) must be made clear. Typically, in addition to a fine, judges also stipulate a sentence to probation as a means of assuring payment. In many jurisdictions probation officers are charged with pressing offenders to pay their fines. Given heavy probation caseloads, however, some departments have hired other employees to monitor fine payments as a way of reducing the burden on trained probation offenders.

Judges have a special responsibility to make known to the offender the seriousness of the sentencing order, and the fact that additional sanctions will follow if the fine is unpaid. The legitimacy of the court in the eyes of both the offender and the community requires that sentences are seen to be carried out.

COLLECTION AND ENFORCEMENT INNOVATIONS

Despite the problems noted in this article, there are courts where fine collection and enforcement are taken seriously, and where methods have been introduced that have resulted in a high proportion of fines being paid. What are some of these techniques, and how can they be applied more generally? The following looks at five methods used in various state and local courts and their advantages and disadvantages.

Installment payments. Increasingly, courts are allowing offenders to pay their fines on the installment plan. The number of payments is usually worked out by the clerk, taking into account the means of the offender and the total amount due. Research in Europe has shown that collection will be more effective if the time period for payment is relatively short.⁸ To the extent that an installment plan stipulates small payment amounts over a long period, the impact of the sanction and the offender's incentive to pay lose strength. Collection efforts by the courts also decline in effectiveness when each payment is small.

In some courts, fine coordinators are employed to counsel offenders on their obligation and to draw up payment schedules. In the Phoenix Municipal Court, offenders consult a coordinator if they cannot pay the fine immediately. After the offender fills out an application, giving personal, family, and financial facts, the coordinator sets up an installment plan according to judicially-approved guidelines. The offender signs a contract and agrees to make the required payments on schedule. This information is entered into the court's computer system so that payments received will be credited to the offender's account. A missed payment will automatically trigger additional enforcement strate-

⁸ Silvia S. G. Casale and Sally T. Hillsman, Enforcement of Fines as Criminal Sanctions: The English Experience and Its Relevance to American Practices (New York: Vera Institute of Justice, 1986, Mimeographed), p. 250.

gies, such as the mailing of a computer-generated warning letter or a telephone call from a fines coordinator.

Credit cards. The potential for a "cashless society" has encouraged courts to allow offenders to make fine payments with credit cards. Administrators have viewed the credit card as a way to receive fine payments while the banks do the actual collecting. Unfortunately, credit cards have not proved as useful to courts as originally projected. For some offenders, especially those from the middle and upper classes, the credit card serves as a convenience when they find themselves in court. Other fine payers either do not own credit cards or they recognize that this payment method may result in an 18 to 20 percent interest charge. Generally, no interest or penalty charges are levied by courts, even for late installment payments.

Computerized recordkeeping systems. The advent of computers has given court administrators effective tools for maintaining fine-payment records and automatically notifying offenders when payments are due. Typically, a computer system will create a case record listing offender information, the amount of money owed the court, and the payment schedule. A computer-generated statement specifying the payments due and stipulating the consequences for nonpayment is given to the offender. When a payment is overdue beyond a certain time period, the computer automatically sends a warning letter to the delinquent offender.

If there are further delinquencies, the automated system alerts court personnel to the need for such additional actions as sending a second warning letter, contacting the offender by telephone, alerting probation services, or handing the file over to a private collection agency.

In addition to tracking offenders' payments and initiating collection strategies, computer systems also assist the administrator in maintaining financial records, reconciling balances, and preparing performance data for judicial and executive branch agencies. Courts are able to tailor computer systems to their special needs, availing themselves of collection and recordkeeping practices that have been in use by private businesses for decades.

Telemarketing. Private businesses also routinely use the telephone to contact customers to remind them of installment payments due. Some courts have found that fine collection can be enhanced by using their own employees or by contracting with private telemarketing firms to provide such reminder services. Modern technology provides for automatic dialing, screening busy signals or no answers with automatic redialing at a later time, using live or prerecorded messages, and recording an offender's response to the question of when a fine payment is to be made. All these technological innovations have proved useful to courts in their collection efforts.

The Tacoma (Washington) Municipal Court, for example, has used a private telemarketing firm since 1984. Payment in full has been received from 20 percent of all cases assigned to the company. During the first two years of experience with this technique, the Court realized \$375,000 in revenue at a cost of \$26,000 -- 7 percent of the amount received.

Collection agencies. Courts are increasingly looking to the private sector for assistance with fine collection. Contracting with a private collection agency to collect delinquent fines has been experimented with in a number of jurisdictions. In most states, collection firms are licensed and must conform to certain approved practices. These companies are able to pursue debtors across state lines and often have access to data bases that allow them to track offenders' whereabouts. Many collection agencies routinely notify credit bureaus of delinquent accounts. Communicating this fact to offenders seems to be a major element in recovering overdue fines.

The Washington State legislature in 1987 authorized courts of limited jurisdiction to use private agencies and attorneys to collect fines. The law also allowed courts to assess offenders for the costs of these services. Research in the Evergreen District Court, Snohomish County, Washington, has demonstrated

the effectiveness of collection agencies.⁹ A total of 600 cases between 90 and 120 days delinquent were randomly divided into three groups of 200. Each group was assigned to one of three different collection methods: court-generated delinquency notice, third-party billing service, and a licensed collection agency. At the end of the experiment, the collection agency had obtained 20.6 percent of the potential amount from its group of cases; the third-party billing service, 14.3 percent; and the court-generated-notice technique, 5.7 percent.

THE FUTURE OF FINE COLLECTION

Fines have proved to be a useful sentencing option for a sizeable number of cases in courts of both general- and limited-jurisdiction. As jurisdictions search for ways to ensure appropriate sanctions in light of jail crowding and record numbers of probationers, the experience of these courts demonstrates that the technology exists for effective fine enforcement and collection. If courts were to avail themselves of these techniques, they should be able to reduce the number and size of delinquent accounts. This would achieve two key goals. It would clearly signal to offender and community alike that judicial orders will be obeyed. And, by making this form of punishment more certain, judges might be inclined to make greater use of the fine as the

⁹ Karen Wick, An Analysis of Three Methods of Collecting Delinquent Traffic Offenses (unpublished paper submitted in partial fulfillment of the requirements of the Court Executive Development Program, Institute of Court Management, 1988).

sole sanction for many criminal offenses.

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(Sidebar)

FINES: PROS AND CONS

The fine is one of the oldest forms of punishment, and is widely used in Western Europe as the sole sanction for the major portion of cases coming before the criminal courts. Sweden, England, and West Germany all report that more than three-quarters of cases result in a fine.¹⁰ In the United States, recent studies for the National Institute of Justice have shown that although the fine is widely used, the amounts levied tend to be relatively small and are used in combination with other sanctions, notably probation.¹¹

Proponents of greater fine use have argued that this monetary sanction offers a number of advantages. The amount of the fine can be adjusted to a level appropriate to the individual offender

¹⁰ James A. Carter and George F. Cole, "The Use of Fines in England: Could the Idea Work Here?" Judicature 63 (October 1979); Silvia S. G. Casale, "Fines in Europe: A Study of the Use of Fines in Selected European Countries with Empirical Research on the Problem of Fine Enforcement," Working Paper 10, Fines in Sentencing (New York: Vera foundation, 1982); Robert W. Gillespie, "Fines as an alternative to Incarceration: The German Experience," Federal Probation 44 (December 1980): 20-26.

¹¹ Hillsman, Sichel, and Mahoney, Fines in Sentencing.

and the seriousness of the crime. Because it is a community-based punishment, it does not destroy the essential economic and social ties of the offender. Fines are relatively inexpensive to administer and can be financially self-sustaining. In short, fines can be an effective punishment for offenders who have committed crimes of varying degrees of severity.

Critics, on the other hand, cite these drawbacks: given the poverty of most offenders, fines cannot be collected; they are difficult to enforce; and their use adds to the courts' administrative burdens.