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FINES AS CRIMINAL SANCTIONS

Sentencing policy in the United States has undergone major alteration in recent years with the introduction of sentencing guidelines, mandatory minimum sentences, and determinate sentencing schemes. With these changes, mainstream sentencing theory and legislative activity have shifted away from the concepts of individualized justice and rehabilitation that have dominated American sentencing philosophy during most of the twentieth century, and toward an emphasis on incapacitation, deterrence, and punishment. While the full impact of these shifts is not yet certain, it appears they have contributed to growing strain on the society's correctional resources. This is at least partially because American policymakers tend to view imprisonment not only as the paramount means available for the effective punishment and deterrence of crime but also as virtually the only means. Within the realm of alternatives, policy attention has tended to focus on sanctions that are relatively new, especially restitution and community service and, more recently, enhanced probation and techniques of electronic surveillance. However, in the last several years there has also been renewed attention from those concerned with expanding the repertoire of non-custodial penalties to what is one of the oldest, and certainly the most widely used, ways of punishing people without

relying on incarceration--the criminal fine.

Fines are, and have been for some time, an important sentencing tool in American criminal courts. In recent years, almost a third of the sentences imposed in U.S. District Courts have involved a fine, either as the sole sanction or in combination with probation (and occasionally with prison). This represents over \$50 million in criminal penalties to be collected annually at the federal level, a figure that is rising steadily. This pattern finds a parallel in state and local trial courts across the entire country. Indeed, in American trial courts of limited jurisdiction, fines are the predominate form of punishment, and in state general jurisdiction trial courts they appear to be used more frequently than is generally recognized, both alone and in combination with other non-custodial sanctions.

The advantages of the fine as a criminal sanction are well recognized: it is unmistakably punitive in its aim and can deprive offenders of ill-gotten gain; it can be adjusted to a level that is both appropriate to the offender's resources and to the seriousness of the offense; it can be coupled with other non-custodial sanctions when multiple sentencing goals are sought; it does not further destroy the offender's ties to family and community; it is relatively inexpensive to administer, relying primarily on existing administrative agencies and procedures; and it can be financially self-sustaining and provide revenue for related social purposes such as victim compensation.

It is the perception of important disadvantages to a fine sentence that gives pause to some policymakers. The degree of punishment imposed by a fine is thought to be limited because fine amounts tend to be low. For the same reason, fines are often considered unfair because they advantage the more affluent offender who is perceived as having "bought his way out" of a more

punitive sanction. If fines are high enough to avoid these problems, they are thought to be uncollectable, difficult and expensive to enforce, or to result in imprisonment for default. Fines are also not considered a deterrent to future crimes and, indeed, they are sometimes thought to be criminogenic. The intent of the sentence to punish and to deter is thought to be undermined if the fine is paid by a third party. Finally, it is sometimes feared that the imposition of fines will impede restitution to victims. While there is undoubtedly some merit to each of these concerns, the increased availability over the last five years of research on courts' experiences imposing and enforcing criminal fine sentences both here and abroad provides an empirical challenge to most of them.

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. While statutory fine maxima have tended to be low, legislatures are increasing them, especially at the federal level; nevertheless, fines actually imposed by judges still tend to be well below the limits provided by statute. However, the experiences of several Western European countries suggest that tested methods are available--particularly in the form of day-fine systems--to tailor fine amounts with more precision to variations in the severity of offenses and in the means of offenders than is currently done in the United States. And, when this is done, fine amounts rise significantly, especially for more affluent offenders, without imposing costly demands on the enforcement system. In addition, if a recent survey of

American judges who handle criminal cases in state trial courts is any indicator, judges in this country tend to view fines sentences positively and many express considerable interest in exploring innovative fining methods, particularly day fines. Indeed, this survey suggests the time may be ripe for focusing more carefully on the place of fines in sentencing schemes and for federal leadership in experimenting with new approaches to their use. Despite American judges extensive use of fines and positive attitudes, they apparently have not yet formulated strong views about the proper place of fine sentences and await further experience and guidance in this area.

One barrier to this process is the concern that, while fines may punish, they may not be an effective deterrent to future criminality. While the evidence available about the deterrent effects of fines compared to other sanctions is as limited as the evidence about the deterrent value of most other sentences, including imprisonment, the evidence that exists is not discouraging. Research in West Germany suggests that, controlling for offense and offender characteristics (including prior record), day fines are no less effective than sentences of short-term incarceration in preventing reconviction among traffic offenders (who are most representative of the general population) and among professional petty thieves, and that fines are considerably more effective than either imprisonment or probation in theft, embezzlement, and fraud cases. In England, where fines are also the sentence of choice for most minor and many non-trivial offenses, research evidence about the deterrent value of fines, although methodologically weaker, nonetheless parallels that from West Germany. Combined with widespread skepticism about the deterrent effects of incarceration, this evidence has encouraged the prevailing view in both countries that fining is probably

penologically effective, or that it is at least less ineffective as a deterrent than are other penalties. Moreover, these data do not encourage the fear that fines are criminogenic, that is, that fined offenders will commit crimes to pay the fine. Indeed, what little evidence there is on how people pay fines suggests that they are paid from regular sources of revenue coming into the offender's household, whatever they may be. While third parties, therefore, may bear some of the burden of the punishment, insofar as members of the offender's household are forced to economize, this may also encourage them to exercise informal but effective social control upon the future behavior of the offender. We know this process occurs under other circumstances, and it is reasonable to assume fines may also activate it.

Finally, fines do not necessarily impede restitution; indeed they may enhance its use. Research in England, whose sentencing policies encourage reliance upon monetary rather than other types of penalties, reveals that restitution typically accompanies a fine sentence and that payment of the victim takes precedence over payment to the crown. In addition, in most jurisdictions, imposition of a fine routinely activates the formal collection and enforcement mechanisms of the state, something that does not always happen when restitution to a private citizen is the only monetary penalty imposed. Criminal fines also provide communities with the opportunity to enhance existing victim compensation funds, an opportunity that has been seized by recent federal legislation that changes the disposition of revenues from federal fines.

These brief remarks summarizing some of the things we have learned from recent research on criminal fining practices both here and abroad are intended to encourage the Sentencing Commission to view criminal fines as an important

non-custodial option, one that is already widely used and accepted by judges but one that also needs reappraisal as to its appropriate place among sanctions and consideration of new ways for it to be imposed. Before turning to some specific thoughts on these issues, I would like to call attention to several very important statutory changes that have taken place in the federal system in the last three years, changes that have created the necessary preconditions for such a reappraisal to take place. As recently as 1983 when I was first invited to Washington to testify about federal fining practices, I and others identified a variety of problems of a statutory and administrative nature that impeded the use of fine sentences in the federal system. Since that time, most of these issues have been addressed by statutory reforms; as a result, remaining administrative difficulties, of which there are several important ones, have a much greater potential for resolution if there are incentives to do so. I think it is worth touching on the most important of these changes because the new statutory provisions address many of the concerns judges and other policymakers raise in discussing the feasibility of improving, and possibly expanding, the use of fines as a federal criminal penalty.

Recent Statutory Reforms as a Basis for Further Change

First, federal fine ceilings have been substantially increased, giving judges much greater flexibility to use fines effectively to punish more affluent defendants and to deprive them of illegally acquired assets. This, combined with the new statutory requirement that judges consider a defendant's ability to pay (including any restitution obligations imposed by the court) in setting the fine amount, provides the court with a strong incentive to assist

the Probation Division improve its heretofore inadequate procedures for collecting and assessing financial information on federal defendants facing sentencing. This is particularly important because federal judges are now charged with having to determine, at sentencing, the terms of payment as well as the amount; previously either the Probation Division or the U.S. Attorney's Office decided upon the terms of payment, including installments, when faced with a sentenced defendant who could not pay the fine immediately. The requirement that setting payment terms be part of the sentencing process itself will help focus the sentencing judge directly upon the offender's capacity to pay; this in turn will bring greater demands from the bench for more complete and accurate presentence reports. Research on fining practices in the United States and Europe indicates strongly that if fines are properly set in relation to means as well as offense, and if the terms of payment are strict but realistic, the likelihood of full payment within the time period set by the court is significantly improved.

In addition, new federal statutory provisions for the routine imposition of interest and penalties on unpaid balances will further encourage prompt payment. There is virtually universal agreement among those who have studied fining that pressure on defendants to pay expeditiously is effective in ensuring full enforcement of the penalty imposed by the court.

Second, statutory improvements now provide judges with the ability to modify the original fine sentence if the offender's circumstances have altered significantly or if the original amount appears to have been set improperly. Again, this generates an incentive for the Probation Division both to improve its collection of relevant financial information and to bring up-dated information to the court in a timely fashion rather than, as has been the

practice in the past, waiting until the period of probation supervision was nearing completion. If this process works as it should, the routine feedback to judges, from both probation officers and U.S. Attorneys in charge of fine collection, of information on the payment performance of fined offenders should increase. This will help judges be more systematic and rational in their original decision-making, as well as provide them with a means they did not have previously of addressing unexpected problems faced by fined offenders, thereby improving the credibility and effectiveness of the sentence.

Third, whether criminal fines are large or small, their efficacy as a criminal penalty rests upon the ability of the court to enforce them: that is, to compel payment if the offender fails to meet his obligation to the court. Evidence has accumulated that, although the great majority of federal fines are collected, a substantial minority are not, and this cannot help but erode the confidence the court has in using this sentence. Recent legislation dramatically improves the tools at the disposal of the court and the government to enforce federal fines. By statute, administrative responsibility for fine collection has been centralized in the U.S. Attorneys' Offices. While many problems of detail and structure remain to be resolved, this key principle of rational administration has finally been established replacing, at least in concept, the acute fragmentation characteristic of the federal system in the past.

Furthermore, new and important statutory tools have also been added to make a potentially more efficient enforcement process a more effective one as well. Once again, the findings of recent research on fine enforcement practices is unambiguous: credible threats work. The primary form such

threats take in virtually all jurisdictions, including the federal system, is the imposition of coercive enforcement strategies--either the seizure of property or, more commonly, imprisonment. More informed initial decisions as to the amount and terms of the fine sentence, combined with greater feedback to the court when problems arise and greater flexibility for the court to modify the sentence, mean that it should be easier for the court to identify truly willful defaulters and then activate new statutory provisions for prosecuting nonpayment with greater assurance than is now possible that there is no other recourse.

Even more important, I believe, are the new federal provisions for property seizure. The decision to fine is generally a decision that a non-custodial punishment should be achieved by depriving the offender of property (money or otherwise). New statutory provisions that create a lien on an offender's property at the time a fine is imposed in federal court and that permit the lien to be enforced by the efficient administrative procedures now used in tax cases provide the court, for the first time, with an opportunity to view the seizure of property, rather than imprisonment, as the appropriate coercive device toward which the fine enforcement process should move. And, if the concept of centralized responsibility for fine administration now embedded in legislation is translated into sound, coordinated enforcement procedures, intermediate enforcement steps can proceed with swift and personal responses to nonpayment characterized by a steady increase in the threat of more coercive methods. Research suggests this will ensure that the need actually to impose those coercive methods--property seizure or imprisonment--will be relatively rare; the new statutory provisions make it far more likely that the threat necessary for this process to proceed effectively will be credible.

Day-Fines as a New Approach to Fine Sentencing

It is clear from research on fining here and abroad that once the decision to fine has been made, setting the amount of the penalty is the key to successful sentencing. Fining must be viewed as a process in which the imposition and enforcement of the sanction are inextricably linked. If the court cannot assume the fine will be collected, the attractiveness of this flexible device to punish and deprive offenders is seriously eroded; but whether it can be collected and enforced without resorting to uncomfortably high levels of coercion appears to depend in large measure on the amount of the original fine in relation to offenders' means. This is a major issue for American judges in considering the expansion of their already fairly extensive use of fine sentences.

The trend in sentencing philosophy today is retribution, which focuses judges primarily on the severity of the crime itself. But in considering the appropriateness of a fine sentence, judges commonly find themselves with "tariff" systems as their only guide to the appropriate amount--that is, systems of informal understanding that fix fine amounts, generally at the lowest common denominator for typical offenders in the system, to be imposed on all defendants convicted of a particular offense. Lacking guidance on other ways to set fines, judges tend to rely on tariff systems and limit their use of fines because these methods place severe restrictions on a judge's ability to adjust fine amounts simultaneously to crime severity and to means. In some jurisdictions we have studied, and probably in many courtrooms around the country, individual judges have tried to modify tariff systems in order to approximate the more formalized European day-fine systems which attempt to reconcile the two potentially conflicting principles of consistency (or

uniformity) and equity in sentencing. But American judges have been provided with little or no guidance on how to do this in a systematic manner. Indeed, state statutes tend to make a day-fine system difficult to develop not only because of low fine ceilings, but also because they do not formally recognize the principles upon which it is based. Nevertheless, in a recent survey, American judges expressed substantial interest in, but uncertainty about, day-fine systems. Fortunately, I believe, new federal statutory provisions provide the groundwork for developing systematic and appropriate methods of fining individuals of differing means convicted of similar offenses across a wide range of severity.

Federal sentencing law now not only recognizes the sentencing principles of proportionality, consistency, and equity, but it also requires that both severity and means be taken into account in setting the amount of a fine. This is an opportunity and a challenge for the federal system to take leadership in this area. Fortunately, there is relevant experience to draw upon in Europe. But important issues remain, primarily in two areas: first, how to obtain necessary information on defendants' means and how to assess their "ability to pay" from that data; and second, how to relate fine levels to offense severity. Before offering some practical suggestions on these problems, based upon the growing body of empirical research, I should point out that personal interviews and surveys of American judges suggest both that they have developed a lot of interest in using day-fine systems, but also that they anticipate media and public criticism of sentences that will inevitably produce some apparent disparities (an employed, middle-class offender fined a much larger amount than a poverty-stricken offender convicted of the same, or even a more serious, offense) and that they are wary of guidelines and/or

ability to pay formulae that appear to limit judicial discretion.

Day-fine systems were initially developed in Finland and Sweden in the early 1920s and 30s, then in Cuba, Denmark and finally the Federal Republic of Germany in 1975. The penal laws of several other countries (now including the American federal system and the state of Kansas) embody the concept but have not fully implemented it. The basic notion is that the punishment represented by a fine sentence should be proportionate to the severity of the offense, consistent or uniform within severity classifications, and equal across individuals with differing financial resources. To reconcile the potentially conflicting principles of consistency and equity in sentencing, day-fine systems create a two-stage decision process in setting the amount of the fine. First, the number of day-fine units to which an offender will be sentenced is determined with regard to the seriousness of the offense (and, perhaps, extenuating and mitigating circumstances as well as the offender's previous record) but without regard to the means of the offender. Thus, crimes of equivalent gravity may be assigned the same number of units as a sentence. The monetary value of each of these units, however, is determined separately in the second stage of sentencing and is explicitly set in relation to what the offender can afford to pay given his or her financial means and, sometimes, responsibilities. Thus, the total penalty--the degree of punishment--should be in proportion to the gravity of the offense committed across different offenses and consistent within severity categories but, within a given offense, it should cause an equivalent level of economic burden (short of hardship) across defendants of differing means.

1. Setting the fine units for offense categories

The German Tagebussensystem (day-fine system) is probably the most useful

comparison for the American federal system. Relatively recently adopted (1975), its legal and social context is more analogous to the American system than is the more commonly described but more idiosyncratic Swedish day-fine system. The German system is organized around benchmarks: the minimum fine sentence is five day-fine units, and the maximum is 360 for a single offense. Although there is no direct correspondence between the number of day-fine units and terms of imprisonment established by law for the same or similar offenses, the 360 maximum is logically linked to the idea of a one year prison term; indeed, in the German sentencing system, fines are typically seen as alternatives to short-term prison sentences.* Thus while assessment of the gravity of the offense for fining purposes is not strictly or solely determined by a comparison to the permissible prison sentence, statutory prison maxima for certain offenses as well as general sentencing practices in imposing prison sentences for those offenses, do seem to play a part in defining the relative seriousness of offenses for the purposes of selecting the number of day-fine units imposed.**

*In West Germany, the day-fine system was adopted about the same time as legislation providing that custodial sentences of less than six months were to be replaced by fines in all but exceptional cases. Together, these innovations appear to have produced significant changes in sentencing patterns. More than 113,000 sentences to imprisonment of less than six months were imposed by West German courts in 1968 (20% of the total); by 1976, this number had dropped to less than 11,000 (1.8%). During the same period, the proportion of fine sentences rose from 63% of the total to 83%.

**In 1973 the 93rd Congress proposed a day-fine system for the United States which was not passed; it set a minimum fine sentence of 10 day-fine units and a maximum of 1093 units, and set ranges for each of the severity levels in the penal code: a maximum fine sentence of 1000 day-fine units for A and B felonies; 500 for C and D felonies; 100 for E felonies; and 50 for misdemeanors and violations.

Calculation of the number of day-units corresponding to the offense is not narrowly prescribed under German law. Courts, therefore, have themselves evolved guidelines for this decision which vary from region to region. (Data on Germany, Sweden and England, all reveal regional differences in both prison and fine sentences, even within offense categories, but regional variations are greater than the variations among judges within a given court or region, and probably reflect different local norms, values and "judicial cultures.") The judges in the area most thoroughly studied in Germany have produced guidelines for ranges of day-fine units corresponding to broad offense groups. However, the range is so great for particular offense categories (e.g., from 10 to 50 units for theft) as to render the guidelines virtually meaningless. Given this latitude, it is possible for judges to tinker with the figures in such a way as to assign a number of day-fine units within the range based not exclusively on the degree of gravity or culpability involved, but also on a calculation of what the resulting total fine amount would be given the monetary value of each day-unit for the particular defendant. This puts the cart before the horse and can reduce the day-fine system in practice to a post-hoc rationalization for a decision based upon more traditional tariff-based sentencing notions.

For this reason, there has been discussion in Germany of reforming the system either to narrow the ranges or to separate the two stages of decision making so that judges do not know the monetary value of the day-fine unit for defendants at sentencing, or both .

The notion of applying to the United States federal system a fairly strict (that is, narrow range) presumptive guideline system for setting the number of day-fine units would be in keeping with much of the current

sentencing guidelines thinking in this country. Since Germany has also capped the maximum monetary value of any day-fine unit at a fairly high level (10,000 Deutschmarks, or about \$4,000), fines for wealthier offenders convicted of the most serious offense for which a fine would be considered appropriate in Germany can be quite substantial even if, theoretically, they are only linked to a year's imprisonment: 3.6 million D.M. (or about \$1.5 million) for a single offense and multiples for consecutive offenses. And, indeed, under the German day-fine system, fines for affluent offenders have risen rather dramatically.

There are potential variations to this fairly pure day-fine model that might be used in the United States, for example, one that would cap the total fine amount permissible (in dollars) for each level of offense seriousness. But this seems cumbersome and antithetical to the notion of trying to maximize the balance between equity and consistency, because caps limit the range of punishment that can be imposed upon more affluent defendants. Such variations in the basic day-fine system are movements away from the retributive base of the model with its emphasis on the crime rather than the offender.

Furthermore, a purer day-fine method of setting guidelines would also permit, it seems to me, greater ease in the imposition of restitution penalties. If the calculation of the number of suitable day-fine units for a particular crime was fixed and had no monetary cap (other than, perhaps an overall high maximum such as in Germany) then the ultimate dollar amount of the fine that results, once the value of the day-fine unit is established, could be viewed by the court as the maximum total monetary penalty permissible for this defendant on this offense. If restitution payments were then included in the sentence, its amount could be set separately according to

recognized principles of assessing damage, harm or injury; that amount would be paid to the victim up to, but not in excess of, the maximum monetary amount established by the day-fine process. Capping the fine amount for different offense levels would not make this process as easy to accomplish, and restitution would probably have to be considered separately. However, research evidence from England strongly suggests that such separate sentencing assessments often leads to imposing total monetary obligations that are far in excess of the offender's ability to pay; this in turn is highly related to nonpayment and default.

2. Assessing means and ability to pay

Under both old and new federal statutes, the courts are left to rely upon information obtained largely from defendants, validated when possible, to assess a defendant's means and ability to pay. Defendants can be asked by the Probation Division, which is charged with the pre-sentence investigation of their financial status, to cooperate voluntarily by providing access to bank and income tax data, but such information cannot now be compelled. It is likely that, if fining is expanded in the federal system, fine amounts will rise and statutory changes may be needed to provide the court, in at least some instances, with greater levels of legal access to financial information. However, it would appear from the experience of other court systems that already fine extensively and in high amounts that exclusive reliance upon voluntary cooperation should not be considered a priori a barrier to the use of fines, and the use of day fines in particular.

The Federal Republic of Germany relies largely on easily available information which generally can be verified if necessary (as do American courts in setting bail amounts). As a practical matter, data on employment,

public assistance, grants and scholarships are the major sources used by the German courts to establish ability to pay. Only rarely, and only in cases of the gravest offenses fined at the highest levels, do courts seek other data, including information from banks which are obliged, under German law, to assist them. The more typical informal information sources for assessing means do not seem to trouble German judges who report wide satisfaction with the system, substantially greater use of fines, and much higher fine amounts. In addition, research has revealed high collection rates in Germany, including collection of very large fines paid by installments over long periods of time.

In England, as in Germany, the source of information on the offender's resources is largely from self-reports or from counsel or police, and it is limited to relatively easily verified items. However, both research and practical experience has indicated to the British that their courts are not taking means into sufficient consideration in setting fine amounts. As a result, the Home Office is attempting to get magistrates to assess means more thoroughly by encouraging use of a new procedure that would provide the court with more financial information on a regular basis. In some courts around the country, defendants facing conviction are asked to voluntarily complete a means enquiry form that contains information about their income, assets and expenditures. In the breadth of the new information requested--taking expenditures as well as resources into account--this form has more in common with day-fine practices in Sweden than with either German day-fine or previous English sentencing practices. Initial reports on this procedure suggest that, among the limited number of courts using the forms, voluntary compliance varies widely but that overall about a third of the defendants are cooperating. Obviously, much more needs to be known about how the English

courts are implementing these procedures and what accounts for the variation in voluntary compliance, but the preliminary evidence is not discouraging.

It would appear that the U.S. federal courts can substantially improve their efforts to obtain financial information from defendants, even if cooperation remains voluntary. Our own interviews with officers of the federal Probation Division and more systematic data collected by the Government Accounting Office suggest that assessing the financial status of defendants has not been given very high priority by probation officers in preparing presentencing reports. Data are often incomplete or non-existent. The new statutory provisions requiring federal judges to consider ability to pay when setting fines, however, will increase the pressure on probation officers to provide better information. This should be accompanied, however, by procedures to assure they receive far better training in financial investigations, better guidance as to what information is available and required by the courts, and better tools to impress upon offenders that cooperation is in their interests and that providing false information is a crime subject to penalty. It is difficult to know in the absence of American experience reflecting a serious commitment to collecting better financial information just how successful such procedures will be. The experience of other countries, however, suggests that, at least in the bulk of cases, these strategies would be effective; for serious career criminals, however, who have substantial financial expertise and who face very large fines as part of their sentences, more coercive tools for obtaining information on assets may be needed in the future.

Finally, if key items of voluntary financial information can be acquired by a better trained and more motivated Probation Division, federal judges can

be provided with standardized assessments of defendants' ability to pay.

Financial institutions and other lenders who are in the business of risking money make such determinations routinely in American society using relatively few pieces of data, much of which is also provided voluntarily or available through credit bureaus. Furthermore, the recent shift in the statutory responsibility for setting the terms of payment--particularly for establishing installment terms--from those at the end of the fining process who are charged with enforcement to those at the beginning of the process who are charged with sentencing suggests that procedures can be set in place immediately to make large fines, like other large financial obligations, payable over time. This can mitigate, at least somewhat, problems caused by initial errors in assessing ability to pay, problems that can also be addressed by judges through their newly acquired right to modify the terms of fine sentences should payment problems prove persistent. Such new flexibility enhances the likelihood that the fine can be a meaningful penalty and encourages movement in the direct of establishing a formal day-fine system to set them.

Before closing, I would like to offer a brief comment on post-sentencing enforcement issues. As I indicated above, research evidence is unambiguous that fines set properly, even when they are large and are to be collected in installments, are enforceable, generally without much additional cost or the use of undesirable coercive techniques. The conditions that must be met for this to occur routinely are largely administrative. The court must signify at the time of sentencing that it views the fine obligation seriously and unequivocally expects payment or specific coercive means (especially seizure of property) will be employed to ensure the integrity of the sentence. The offender's payments must be closely monitored by people who take their

responsibility for fine collection seriously and who are held professionally accountable for failure. When an offender does not meet the terms for payment set by the court, the enforcement reaction should be immediate and personal, with a steady progression of responses characterized by mounting pressure and increased threat of greater coercion. If these administrative activities occur systematically, there is little reason for concern that large numbers of defendants will face imprisonment for contempt of court or prosecution under new federal statutes for willful default. Research evidence suggests that the majority of nonpayment cases result from improperly set fines, administrative ineptitude, and the failure of enforcement agencies to credibly threaten delinquent offenders in a timely fashion. As I indicated above, recent legislative action has provided the federal bench with the potential for fine enforcement to operate far more smoothly and effectively than it has in the past. This represents an important precondition for developing new sentencing techniques that will enhance the usefulness of the fine; it also presents an unparalleled opportunity for the federal system to attempt to do so.

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