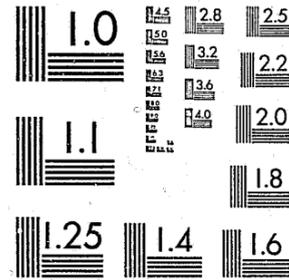


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National Institute of Justice  
United States Department of Justice  
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# Department of Justice

STATEMENT

OF

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CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON CRIMINAL JUSTICE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

CONCERNING  
CRIMINAL FINE COLLECTION

ON  
AUGUST 3, 1983

U.S. Department of Justice  
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Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to appear before the Subcommittee to discuss the efforts of the Department of Justice to improve the collection of criminal fines.

Fines are an important part of the penalty structure of federal criminal law. They are particularly appropriate sanctions for economic crimes and for especially lucrative criminal activity such as drug trafficking. However, imposition of a fine serves no punitive or deterrent purpose if it goes unpaid. For this reason, we are committed to improving our collection efforts.

The total balance of unpaid criminal fines is immense. Presently, there are more than twenty-one thousand (21,058) cases in which criminal fines have not been fully paid. As of May of this year, the aggregate outstanding balance of unpaid fines amounted to nearly one hundred and thirty-two million dollars (\$131,917,602). It should first be pointed out that one-fourth of these twenty-one thousand outstanding cases (5,787) are over ten years old. They offer little prospect of collection. In approximately eighty percent of this over ten year old group of cases, the location of the debtor is no longer known. In most of the remaining cases in this category the debtor has no assets upon which to levy. No statute of limitations operates to close these cases after a period of years, so they will continue to appear as uncollected fines until the death of the convicted

person. While these stale cases with little promise of collection make up one-fourth of the total number of cases, the unpaid fines involved amount to only about five percent of the one hundred thirty million dollars of fines owed.

It should also be borne in mind that the remaining \$125 million in unpaid fines includes cases which are still under appeal, cases in which defendants are making partial payments over several years as a condition of probation, and cases in which debtors are currently serving terms of imprisonment and any payment is unlikely to commence until after their release.

These characteristics of both the most recent and oldest cases put the problem of fine collection in a better perspective, but it nonetheless remains a serious one the Department of Justice is committed to addressing. For the reference of the Subcommittee, there is attached to my statement a brief analysis of statistics on our outstanding criminal fine cases.

In order for the Subcommittee to better understand the nature of the fine collection problem and the steps we are taking to increase our rate of success, I would like to briefly describe the way in which criminal fines are imposed and collected in the federal system.

Most federal offenses prescribe a maximum fine that may be imposed either alone or in addition to a sentence of imprisonment. At sentencing, the court receives a presentence report which includes information about the financial condition of the

defendant.<sup>1/</sup> However, the court is not required to consider the ability of the defendant to pay in imposing a particular fine. Thus, there are cases in which large fines are imposed that are from the outset beyond the ability of the defendant to pay and so hold no realistic prospect of full collection. (On the other hand, there are also cases in which no fine or a small fine is imposed despite the fact that a large fine would seem merited in light of the severity of the offense and the extensive financial resources of the defendant.)

Fines are generally imposed in one of two ways. The trial judge may impose a "straight fine." Alternatively, payment of a fine may be imposed as a condition of probation. The collection procedures for these two types of fines are different.

With a straight fine, if payment is not made, the responsibility for collection falls on the United States Attorney's Office. In the 120 days following sentencing, the court may correct or reduce the sentence of fine,<sup>2/</sup> but after this period the amount of the fine is set and the court's role in collection efforts will be limited to instances in which a contempt sanction is sought for willful failure to pay.<sup>3/</sup>

<sup>1/</sup> See Rule 32(c) of the Federal Rules of Criminal Procedure.

<sup>2/</sup> See Rule 35 of the Federal Rules of Criminal Procedure.

<sup>3/</sup> The exception is the case of a "stand committed" fine. In these cases, the court will order the imprisonment of the defendant until he pays the fine. If the defendant demonstrates to the court that he is indigent, he must be released. The fine owed is not discharged, however. See 18 U.S.C. §3569.

Information on the imposition and payment of criminal fines is not automatically transmitted by the court to the United States Attorney's Office. The attorney in charge of collections must learn of the fine from the prosecuting attorney or clerk of the court. Information on the case is then entered into the case tracking system of the U.S. Attorney's Office so its status can be monitored and updated.

Criminal fines must be enforced in the same manner as money judgments in civil cases.<sup>4/</sup> This fact means that in collecting a criminal fine, the United States is put in the same position as an ordinary creditor and must follow State law and procedure with respect to various steps of recording or docketing judgment, perfection and attachment of liens, levy and execution, and foreclosure and sale. The procedures, which differ considerably from State to State, are often cumbersome, and during delays in meeting these various procedures, the rights of other creditors may gain preference over those of the United States. Moreover, the laws of the States will limit the life of any lien and exempt differing types and amounts of the debtor's property from execution or foreclosure.

Where payment of a fine is imposed as a condition of probation, the situation is quite different. First, in determining the specific condition of payment, the court may set a schedule of partial payments to be made over the course of the

<sup>4/</sup> See 18 U.S.C. §3565.

term of probation. Since payment of the fine is a condition of probation, collection responsibility rests with the Probation Office.<sup>5/</sup>

Because the court retains the power to modify conditions of probation and to impose sanctions for violation of these conditions, the enforcement of fines in the probation context has advantages of flexibility and strong incentive for payment. If the probationer has not made a good faith effort to meet his obligations, the court may modify, extend, or even revoke his probation. On the other hand, if a probationer is unable to pay the fine despite his best efforts, the court may modify the amount of payment or extend the period for payment up to the maximum five year term of probation. Generally, where the debtor has made a good faith effort to pay his fine during the probation period, the court will remit any unpaid balance at the end of his probation. Should an outstanding balance remain after probation, however, the responsibility shifts to the United States Attorneys' Offices to collect the fine in the same manner as when a straight fine is imposed initially.

Collecting criminal fines is often a difficult task. Cases involving outstanding fines fall into two categories. In one category of cases, collection efforts are virtually doomed from the outset because the offender has few if any available assets

<sup>5/</sup> The U.S. Attorney's Offices do keep track of status of fines in these cases, and may record the fine as a lien against property of the defendant to assure against disposition of assets to avoid payment.

and poor employment prospects. In the other category, however, the fines, or a substantial portion thereof, are collectable because the offender has significant assets or the ability to earn a steady, sizable income. It is with respect to this latter category of cases that we can improve our collection efforts.

In our view, solutions to the fine collection problem lie in two areas. The first set of solutions must come from within the Department of Justice, for they concern policy decisions regarding the priority we place on the collection of criminal fines. One reason that the rate of collection has been so poor in the past is that collection efforts were assigned low priority by both officials in Washington and the United States Attorneys in the field. Few resources were devoted to collections. Collection cases were assigned to the most inexperienced attorneys or even support staff who were offered no specialized training; information about individual cases and new collection techniques was inadequate; and aggressive collection was by far the exception rather than the rule.

In the past few years, the Justice Department has done much to break this pattern. In 1981, the Attorney General Smith directed that the collection of debts owed to the United States, including criminal fines, was to be a priority of the Department. We are now working in a number of ways to fulfill the Attorney General's mandate. Each newly appointed United States Attorney has been apprised of the Department's emphasis on effective

collection, and the Attorney General has taken steps to officially acknowledge those U.S. Attorneys who have shown special initiative in this area. Moreover, a Department-wide Debt Collection Task Force which will coordinate our efforts is now functioning under the direction of the Assistant Attorney General of the Civil Division.

Providing assistance to the United States Attorneys is a large part of this effort. The Executive Office for United States Attorneys is sending teams into the field to audit collection activities and report to the United States Attorneys on particular problems within their offices. The Executive Office is also providing training to our attorneys in innovative, aggressive collection techniques and is in charge of bringing on board much needed additional administrative personnel to support the work of our attorneys in the field. Much is also being done by the Executive Office to modernize the case tracking system in the U.S. Attorney's Offices so that information on the status of collection cases and on the location of the debtor and his assets is easily updated and accessible.

Assistance specifically geared towards the collection of criminal fines is also provided through the Department's Criminal Division. Professional staff with expertise in fine collection

monitors the progress of individual cases in the field, maintaining direct contact with Assistant U.S. Attorneys and support personnel. An important part of this direct contact is discussion of effective strategies for collection, including innovative and aggressive techniques.

Too often, criminal collection work has been viewed as a passive activity, consisting of little more than filing liens and sending dunning letters. That is not enough! For example, one serious problem in collecting large fines is the fact that a defendant may actively conceal his assets to shield them from the government. These cases must be actively pursued through investigation, deposition of the defendant and third parties, and, where necessary, litigation to obtain court orders and contempt sanctions. This sort of aggressive approach is an important part of the Justice Department's new policy and is beginning to produce results.

Three recent cases illustrate how this new approach can pay off. Leroy "Nicky" Barnes, a notorious drug dealer, was convicted in 1978 and is currently serving a life sentence for narcotics offenses. Barnes owes the government \$125,000 in criminal fines and more than \$400,000 in taxes. An aggressive investigation of Barnes' financial holdings showed evidence suggesting a sophisticated scheme to shield his assets from the government. He invested hundreds of thousands of dollars in a Michigan real estate venture, but was to receive virtually nothing from the sale of the underlying project. As a result of extensive

discovery of the role of third parties in these financial manipulations, the government has filed suit to recover the money.

A case involving a \$300,000 fine owed by Richard Kones provides an example of both the difficulties that are posed in fine collections and how persistence and ingenuity -- in this case on the part of Assistant United States Attorney Robert Jupiter -- can produce results. Kones was convicted of a 1.5 million dollar Medicare swindle and sentenced to seven years' imprisonment and a \$300,000 fine. Routine fine collection efforts failed. When deposed, both Kones and his wife refused to testify, invoking the Fifth Amendment.

While the FBI was unable to locate any stateside assets, its investigation revealed that Kones had transferred funds to a branch of the Chase Manhattan Bank in the Bahamas. AUSA Jupiter levied a writ of execution on the bank's New York office and a hotly contested law suit ensued. Mr. Jupiter eventually won this action, but by that time the account was void of funds.

AUSA Jupiter continued his efforts and determined that Kones had assets in the Grand Cayman Islands, which are favored as a haven for hidden assets because of their bank secrecy laws. In the Caymans, Mr. Jupiter retained local counsel and succeeded in obtaining a court order temporarily freezing Kones' assets. AUSA Jupiter then sought a court order in New York requiring Kones to reveal all his assets and transfer them to the United States.

Failure to comply would mean contempt charges. Faced with this action, Kones finally agreed to transfer the amount of the fine to his attorney in the United States, and to make an immediate payment of \$50,000 with the remaining balance of the fine to be paid over three years.

Sometimes, effective fine collection depends on a combination of alertness and follow-up action. For example, Gordon Liddy, years after his conviction, had still not paid an outstanding fine, yet his financial success as a writer and lecturer was publicly reported. One of our collections attorneys quickly brought the situation to the attention of the United States Attorney's Office in the District of Columbia. Depositions of Liddy and his accountants followed and, as a result, the government was able to collect the fine from money owed Liddy in New York for books and lectures.

These cases demonstrate that if the collection of criminal fines is assigned appropriate priority by the Department and sufficient resources are devoted to this effort, even difficult collection cases can be solved. Improving collection rates through necessary policy and administrative changes is a strategy to which the Department of Justice is committed. It is, however, only a partial solution to the fine collection problem. Legislative changes are also necessary to improve the manner in which fines are imposed and collected.

Such legislative improvements are incorporated in the sentencing title of the President's "Comprehensive Crime Control Act of 1983," introduced in the House as H.R. 2151. The basic contours of these sentencing reforms are no doubt familiar to many members of the Subcommittee. Their purpose is to provide greater rationality and consistency in criminal sentencing through application of articulated guidelines developed by an independent sentencing commission.

In addition to making the imposition of fines, as well as terms of imprisonment or probation, subject to guidelines based on consideration of both offense and offender characteristics, these sentencing reforms include several provisions that would directly address certain problems that have arisen in collecting criminal fines. First, courts would, for the first time, be required by statute to consider the financial resources of the defendant and his obligation to support dependents in determining the amount of fine to be imposed. This requirement should reduce the number of cases in which fines are largely uncollectable ab initio because they far exceed the ability of the defendant to pay. Second, at sentencing, the court could impose a specified schedule of payment, a very workable approach that is presently confined to instances in which payment of a fine is imposed as a condition of probation. Third, if a defendant had made at least some payment toward his fine, the court could, upon a showing of changed circumstances, modify the method of payment or reduce the amount of the fine. Again, this sort of flexibility is now

possible only where payment of a fine is imposed as a condition of probation. These features allow the court to remain involved in the collection process and to respond to changed circumstances of defendants.

In addition to these improvements in the manner in which fines are imposed, our bill also enhances the government's ability to collect fines. First, the court would be required to transmit to the United States Attorney's Office information on fines imposed and payments made. The ad hoc information sharing arrangements currently in place are not sufficient. Second, a twenty-year statute of limitations would apply to the collection of a criminal fine. Presently, liability ceases only upon payment in full, death of the debtor, or a Presidential pardon. This limitation period will allow the United States Attorneys to close cases that are so old that collection is unlikely.

Third, and most important, unpaid criminal fines could be collected in the same efficient manner as taxes owed to the United States. Much of the cumbersome clerical procedure and litigation in State courts now necessary to create and enforce judgment liens to collect unpaid fines would be eliminated. A lien would arise at the time of imposition of the fine and extend to all the property of the defendant. The lien could be enforced like a tax lien through the same efficient administrative levy procedures used in tax cases. In addition to these efficient collection procedures, the legislation contains provisions designed to protect the interests of innocent third parties and

to allow release of the lien upon the debtor's payment of a bond or discharge of part of the lien where remaining encumbered property is sufficient to satisfy the fine. In sum, application of these procedures would not only provide a more efficient collection mechanism, but also create a strong incentive for payment because of the debtor's desire to remove liens clouding the title to his assets.

These legislative improvements, combined with the policy and administrative changes already undertaken by the Department of Justice, would, in our view, significantly increase our ability to collect criminal fines. The Department of Justice and others are also considering additional concepts for improving fine collection rates. These include making payment of a fine a mandatory condition of probation where a sentence of fine is also imposed and similarly making fine payments a mandatory condition of parole; providing a statutory mechanism whereby a court, consistent with the Supreme Court's recent decision in Bearden v. Georgia, \_\_\_ U.S. \_\_\_ (May 24, 1983), could resentence a defendant to an authorized term of imprisonment if he failed to pay a fine and the default was culpable or an alternative penalty of imprisonment was necessary to serve the purposes of punishment and deterrence; and making willful failure to pay a fine a specific criminal offense.

Mr. Chairman, that concludes my prepared statement, and I would be pleased to respond to any questions you or members of the Subcommittee may have.

### Statistical Analysis of Criminal Fine Collections

Data as of May 31, 1983, show a total of 21,082 criminal fines outstanding with an outstanding balance of \$131,917,602. These are Department-wide figures and include fines imposed in criminal, tax, anti-trust, and lands cases.

Of these approximately 21,000 outstanding fines, about 6,000 are more than 10 years old, while 12,000 are less than five years old. The remaining 3,000 are between 5 and 10 years old.

<u>Date of Imposition</u>	<u>Number of Outstanding fines</u>	<u>Amount Outstanding</u>
Prior to 1973	5,787	\$ 6,613,536
1973-1977	3,213	15,167,529
1978-May 1983	12,058	110,136,537
	<u>21,058</u>	<u>\$131,917,602</u>

#### Fines Imposed Prior to 1973

Of the approximately 6,000 fines imposed prior to 1973, the oldest is a 1902 case with a \$2,100 balance. About 50% of these cases have an outstanding balance of less than \$500. There is little information about most of these pre-1973 cases beyond the name of the debtor and date and amount of the fine imposed. The location of the debtor is unknown in about 5,000 of these cases and most of the remaining 1,000 debtors have no assets upon which to levy. The majority of these cases involved violations of the alcohol tax laws.

#### Fines Imposed 1973-1978

Of the approximately 3,000 fines imposed from 1973 through 1978, more than half have balances of less than \$1,000. About 1,500 of the debtors are equally divided between those who

are presently in prison, those who have no assets, and those whose location is unknown. In fiscal year 1982, approximately one million dollars was collected from the 1973-1978 group of debtors. As of May 31, 1983, \$350,000 had been collected from this group for the present fiscal year.

Year of Imposition	Number of Outstanding Fines	Amount Outstanding
1973	288	\$ 1,863,482
1974	1069	3,026,063
1975	624	2,623,474
1976	535	3,411,094
1977	697	4,243,416
	<u>3213</u>	<u>\$15,167,529</u>

Fines Imposed 1978-May 1983

Of the 12,000 debtors owing \$110,000,000 for the most recent period, 1978 through May, 1983, more than half have fines with balances under \$2,500. On the other had, 3% of these debtors owe more than half of the \$110 million outstanding. (This 3% includes antitrust cases in which particularly large fines were imposed.)

A considerable number of fines are not immediately paid when they are imposed because conviction is appealed. In others, the court directs that fines be paid during the term of probation, which runs up to 5 years. Still others involve a prison term and payment begins only after the offender is released and finds employment.

Year of Imposition	Number of Outstanding Fines	Amount Outstanding
1978	834	\$ 8,174,662
1979	1145	6,385,704
1980	1808	12,296,485
1981	2904	23,463,198
1982	3430	43,107,245
January-May 1983	1937	16,709,243
	<u>12,058</u>	<u>\$110,136,537</u>

As of: 06/30/83

U. S. ATTORNEY  
CRIMINAL FINE COLLECTIONS  
FISCAL YEARS 1968 - 1983

Year	Beginning Balance	Imposed	Collected	Other <sup>1/</sup>	Ending Balance
1983	\$120,323,443	\$78,871,595P	\$33,743,792P	\$18,349,699P	\$147,101,547P
1982	91,765,932	62,828,522	28,553,655	5,717,356	120,323,443
1981	79,823,972	42,114,094	27,554,503	2,617,631	91,765,932
1980	67,121,338	37,498,821	21,336,483	3,459,704	79,823,972
1979	61,835,477	32,461,879	24,909,919	2,266,099	67,121,338
1978	50,695,130	31,117,197	18,312,620	1,664,230	61,835,477
1977	38,225,709	42,991,301	18,665,388	11,856,492	50,695,130
1976	34,067,592	21,570,846	14,923,614	2,489,115	38,225,709
1975	28,245,260	20,830,527	12,739,098	2,269,097	34,067,592
1974	25,296,613	17,656,757	12,179,797	2,528,313	28,245,260
1973	20,980,322	19,693,603	14,034,547	1,342,765	25,296,613
1972	17,733,098	12,801,716	8,701,245	853,247	20,980,322
1971	15,937,978	11,683,897	8,590,932	1,297,845	17,733,098
1970	14,491,540	7,369,778	5,923,340	-	15,937,978
1969	13,108,133	6,924,010	5,540,603	-	14,491,540
1968	11,666,808	6,885,440	5,444,115	-	13,108,133
16 Year Totals		\$453,299,983	\$261,153,651	\$56,711,593	
% Changes	+931%	+1,045%	+520%	+1,314%	+1,022%

For FY 1983, P = Projected based on statistics through June 30, 1983 (minus 9 PROMIS Districts for all or portions of FY 83)

Receivables	\$464,966,791
Other Termination	(56,711,593)
Net Receivables	\$408,255,198
Collected	\$261,153,651
Net Effective Rate	= 64%

<sup>1/</sup> Includes fines remitted by the court at end of term of probation and those discharged by pardon, death of the debtor and reversal of conviction on appeal.

Summary of Collections for Fiscal Years 1968-1983

The attached table summarizes criminal fine collections for fiscal years 1968-1983. Apparent disparities between these figures and those cited above are due to the use of a fiscal year rather than a calendar year base. In addition, the somewhat larger totals in the table reflect inclusion of data from an additional month (June 1983) and projections through the end of this fiscal year.

**END**