

PROPORTIONAL JUSTICE: THE CHALLENGES OF IMPLEMENTING COURT FINE AND  
FEE REFORM IN CALIFORNIA

A Thesis

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Glen R. Wilkins

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Abstract  
of  
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*Statement of Problem*

The current tariff-fine system used throughout courts in the United States sets punitive fines based on the seriousness of an offense but does not consider the defendant's ability to pay. This system disproportionately harms low income people and burdens them with legal debt that is not dischargeable and can result in jail time if ultimately unpaid. This thesis analyzes the potential of implementing an alternative fine system, known as day-fines, in California courts. In a day-fine system, a fine is based on units with each unit representing a multiple of the defendant's daily income and additional units can be assessed for more serious crimes.

*Sources of Data*

In this study, I conducted three semi-structured interviews with a former California court administrator, an expert on California courts, and a Judicial Administration Fellow. I also reviewed papers and articles on day-fine pilot programs previously implemented around the United States as well as evaluated an annual report for a currently implemented pilot program in California for online traffic adjudication and ability-to-pay. Additionally, I assessed a response to a questionnaire sent to the author of a report on a day-fine pilot program that failed in Ventura County, California.

*Policy Recommendations*

Based on my findings, I provide the following policy recommendations that California courts should consider when implementing a day-fine system in California courts: 1) Ensure software vendors have experience with and understand case management systems so that any new software can properly interface with existing systems; 2) Engage with all judges in the participating courts early in the process; 3) Advertise the value of the pilot program to stakeholders and the public as early as possible; 4) Upon implementation, prepare and record extensive analytics on key data such as revenues, changes in sentencing patterns, and feedback from court participants; and 5) Include a broad coalition of stakeholders in the planning and implementation phases; this should especially involve stakeholders who hold reservations about the program.

\_\_\_\_\_, Committee Chair  
Dr. Edward Lascher

\_\_\_\_\_  
Date

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Why public policy? Because it was not one set of hands, but *many*, that tamed fire, wrought the wheel, and set the spoken word to print. All that we possess we owe to this collection of people we call society. We live in society and we must all work to nurture and protect it.

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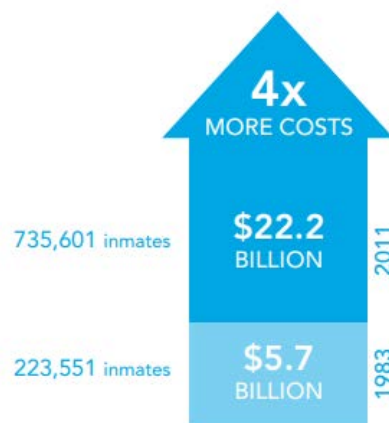
## Chapter 1: Introduction

Fines constitute an important tool in the criminal justice system and are applied as a punishment upon a criminal conviction or admission of guilt in a wide variety of cases ranging from minor traffic infractions to felony-class offenses (Colgan, 2019). Historically, legislatures and the criminal justice system in the United States concerned themselves with defining the appropriate amount of tariff-fines, also known as fixed fines, to match the seriousness of a crime. However, starting in the 1980s, some state legislatures, courts, and local governments in the United States began to realize that alternatives to fixed-fine regimes should be considered to address mounting concerns about economic justice and dwindling fiscal resources (Winterfield & Hillsman, 1993).

One policy solution—already in use in several European countries—is the day-fine system. Sweden and Germany have long implemented day-fine systems, which impose a fine based on the offender's income in a system of units. Each unit is a multiple of the defendant's daily income and more units are assessed for more serious crimes. This system allows judges to assess fines based on both the severity of the crime and the relative wealth of the defendant. This alternative strategy can therefore ameliorate some of the equity problems inherent to this corner of the criminal justice system. The extensive literature covering day-fines notes numerous advantages to such a fine regime, particularly in how it can provide relief for indigent defendants who cannot afford to pay prevailing tariff-fines. Offenders who are unable to pay their legal financial obligations (LFOs), which include criminal fines and court fees, often lose their driver's license or find themselves facing jail time, with some jurisdictions being described as *auto-jail* for nonpayment (Harris, 2016). This outcome is costly to the individual in terms of lost jobs, reduced or garnished income, and time away from family (Henrichson et al., 2017). Furthermore, jail sentences burden taxpayers with the high costs of incarceration (Henrichson, Rinaldi, &

Delaney, 2015). Jail populations tripled in the United States in the period between 1983 and 2011 (Henrichson, Rinaldi, & Delaney, 2015). Given the corresponding expansion of costs as jail populations expand, reducing the jail population through a day-fine system could reduce taxpayer burden as well as the social cost of jail to the individual.

**Figure 1: More inmates, higher costs: Jail population in the United States**



Source: The price of jails (2015).

It is worth emphasizing that LFOs are not burdensome merely for repeat offenders or hardened, violent criminals. A single instance of contact with the criminal justice system for something as minor as a traffic violation can result in a slew of fines and fees that, if not paid in a timely manner, can cause a cascade of problems for low income people, even in cases where jail time is avoided. Bender et al. (2015) described how what used to be a \$100 traffic fine has now ballooned to \$500 due to the added court fees, a figure which can then jump to \$800 if the initial deadline to pay is missed. Worse still, courts can suspend a person's driver's license for failure to pay LFOs. Pawasarat and Quinn (2007) noted that a valid driver's license was a more accurate predictor of sustained employment than a General Educational Development (GED) diploma among public assistance recipients. This means that minor traffic infractions like rolling through a stop sign or speeding can have downstream consequences for low income people that can result

in job loss if they lose their license, which can then spiral into further financial problems. The scale of this problem in California is massive. Bender et al. (2015) estimated that 4.2 million Californians had their licenses suspended for failure to pay at the time their report was published, a figure which notably does not include suspension actions following serious offenses, like a drunk driving conviction. That means over 4 million people in California may struggle to achieve stable employment while any fines or fees they owe will continue to climb into a debt they may never be able to repay.

Day-fines may offer a solution to this problem, but as in many cases where an ostensibly beneficial policy solution exists, the question then turns to how to implement it. Literature on previous day-fine pilot programs carried out throughout the United States describes technical challenges in ascertaining offender income on which to base day-fines as well as difficulties predicting expected revenues due to computing limitations, at least as of the 1990s (Mahoney, 1995). In this thesis, I will review the obstacles faced by prior day-fine pilot programs and evaluate whether those problems would likely hinder implementation of a day-fine system today. I will use qualitative data from interviews with experts and court officials in California to examine any current barriers to implementing a day-fine system and to explain how such a system might be employed.

## **Chapter 2: Review of the Literature**

The current literature on day-fine systems predominantly takes the form of white papers and policy briefs. These works describe both successful and unsuccessful implementations of day-fine pilot programs in various jurisdictions around the United States and are particularly useful in evaluating the political, judicial, and economic concerns that surround this policy idea. More expansive literature exists on the impacts of monetary sanctions and legal debt in the criminal justice system. Numerous books and articles have been published in recent years on the harm that indigent defendants face under looming LFOs as well as the costs imposed upon society at large. While the available literature does not always cover day-fines specifically, it does often detail other policy measures undertaken by courts to ease some of the burden carried by indigent defendants. However, individual court efforts in this regard are often inconsistent and reflect the normative views on punishment that prevail in that area (Harris, 2016). The literature on both day-fines and LFOs reaches the consensus that fines and court fees that are beyond the ability of indigent defendants to pay criminalize poverty, contribute to social instability, and can ultimately skew the aims of justice (Case & Bhattacharya, 2017; Colgan, 2019; Henrichson et al., 2017; Llorente, 2016; Mahoney, 1995; McDonald, Greene, & Worzella, 1992; Turner, & Petersilia, 1996; Vera Institute of Justice, 1995).

### **Background on Reforms**

A review of the literature on day-fines and LFOs in aggregate reveals that part of the impetus behind reforming the tariff-fine system centers on the idea of equal justice. The current tariff-fine system falls short in this regard because it is determined solely by the seriousness of the infraction while ignoring the offender's ability to pay. This impacts lower income individuals more acutely in that they will be charged a fine that constitutes a greater portion of their income. Under tariff-fine regimes, the available literature describes how courts essentially criminalize

poverty by burdening the poor under mountains of debt from fines, fees, and costs as well as imposing increasingly severe punishments for failure to pay (Gleicher & DeLong, 2018; Llorente, 2016;). On the other end of the spectrum, higher income earners experience less of an economic impact from fixed fines because such fines typically represent only a tiny fraction of their total income. This weakens the impact of fines as both a deterrent and a punitive sanction for criminal activity among high income earners. For the wealthy, a \$500 fine might be viewed as a mild nuisance, but for lower income individuals it might constitute a devastating financial blow (Liu, Nunn, & Shambaugh, 2019).

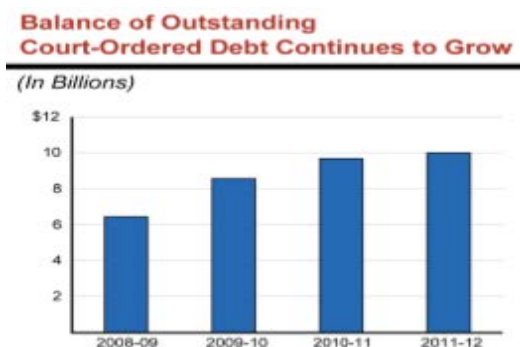
The specter of jail time lurks behind the inability to pay court-assessed fines. Under such circumstances, the wealthy do face a higher economic cost of being sent to jail on account of the potential earnings they would forego. However, The Sentencing Project (2013) detailed how the wealthy are better equipped to avail themselves of the adversarial U.S. court system and the constitutional protections offered therein. Wealthy defendants can afford better legal representation, while lower socioeconomic defendants endure understaffed and underfunded indigent defense counsel (The Sentencing Project, 2013). In all phases of the criminal justice system—from court processes, to fee assessment, and to potential incarceration— poor Americans face a deck stacked against them.

### ***The Harm of Legal Financial Obligations***

In *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*, Harris (2016) argued that LFOs, even minimal ones, place an undue burden on indigent defendants that extends well beyond judicial sentencing by limiting defendant income and by imposing long-term debt obligations. These consequences then serve to worsen existing racial and economic inequities in the criminal justice system. Harris also described how LFOs function in the criminal justice system and detailed the history of monetary sanctions in the United States, with a particular focus

on her research of defendant experiences in Washington State. Harris (2016) then delved into the theoretical aspects of LFOs, discussing both the legal intent behind imposing LFOs as well as challenging the legal reasoning behind them based on the outcomes observed through her research. Harris further critiqued LFOs, first by revealing that such sanctions harm defendants without providing sufficient recompense to victims or reimbursement to courts, and then by describing how the discretionary role of judges and clerks decouples justice from punishment by allowing key players to impose LFOs with little oversight or accountability (Harris, 2016). Many of Harris's findings are echoed in Gleicher and DeLong (2018), who found an increased use of Criminal Justice Financial Obligations (CJFOs) since the 1970s during a general trend of tough-on-crime policies of that era that shifted a greater burden of court costs from the taxpayer to those in the criminal justice system. Unlike some other types of debt, financial obligations to the criminal justice system cannot be discharged through bankruptcy and will continue to accrue interest if unpaid, regardless of whether the individual was ultimately convicted (Gleicher & DeLong, 2018).

**Figure 2: Balance of outstanding court-ordered debt (California) continues to grow.**



Source: California Legislative Analyst's Office (LAO) (2014)

***Function of LFOs in the Criminal Justice System***

Harris (2016) described the legal reasoning of policymakers for imposing LFOs as threefold: (1) a source of revenue for victim restitution programs; (2) a way for justice-involved individuals to help pay for court costs resulting from their own criminality; and (3) a means of extending offender accountability beyond the sentencing of the court. I believe this legal reasoning ostensibly seeks to achieve justice for victims and recoup administrative costs while providing judges with a greater selection of punitive options. Courts routinely add layer upon layer of surcharges to base fines, resulting in totals that are many times higher than the base amounts (California Legislative Analyst's Office, 2014). However, Harris's (2016) research found instead that victim restitution is not prioritized and often loses out to administrative costs, that the fines and fees now collected to recoup costs only serve to perpetuate the administrative system, and that LFOs condemn defendants to a life of criminal justice monitoring and continual assessment. Furthermore, Harris (2016) found evidence that LFOs are imposed and enforced arbitrarily and inconsistently, resulting in a broad punishment continuum in the jurisdictions she researched.

**Figure 3: Various fines and fees substantially add to base fines (California)**

<b>Various Fines and Fees Substantially Add to Base Fines</b>		
<i>As of March 1, 2014</i>		
	<b>Failure to Stop at Stop Sign<sup>a</sup> (Infraction)</b>	<b>Driving Under Influence of Alcohol/Drugs<sup>a</sup> (Misdemeanor)</b>
Base fine	\$35	\$390
State surcharge	7	78
State penalty assessment	40	390
County penalty assessment	28	273
Court construction penalty assessment	20	195
DNA Identification Fund penalty assessment	20	195
EMS penalty assessment	8	78
EMAT penalty assessment	4	4
Court operations fee	40	40
Conviction assessment fee	35	30
Night court fee	1	1
<b>Totals</b>	<b>\$238</b>	<b>\$1,674</b>

<sup>a</sup> These examples show the total obligation owed for a selected infraction and misdemeanor. Depending on the specific violation and other factors, additional county or state assessments may apply.  
EMS = Emergency Medical Services and EMAT = Emergency Medical Air Transportation.

Source: California Legislative Analyst's Office (LAO) (2014)

### ***The Punishment Continuum***

Harris (2016) found that different counties in Washington State showed varying degrees of punitiveness in applying and enforcing LFOs. Harris explained how court officials and defendants described some jurisdictions as *auto-jail* for nonpayment, while other counties interpreted and applied terms like *indigent*, and *willful* (regarding nonpayment) in slightly different ways, reflecting the normative views on punishment that prevail in that area (Harris, 2016). Some judges that Harris observed clearly did not want to incarcerate legal debtors who were behind on payments and would offer to release the debtor if someone else—a family member or even an employer—would come and pay. Harris (2016) revealed that some judges even encouraged debtors to seek illicit under-the-table funds to pay off their debts to avoid jail, a situation that raises ethical concerns and undermines the very foundations of law. Other research noted that indigent defendants facing high fines may seek assistance from family or other community members to help them pay, which some judges viewed as moving the punitive impact of the fine from the offender onto someone else (McDonald, Greene, & Worzella, 1992). In either case, whether a defendant seeks extralegal means to pay the fine or relies on someone else to pay, these situations undercut the aims of justice.

### **Day-Fines as a Policy Solution**

In the 1980s and 1990s, several state, municipal, and county governments in the United States implemented day-fine system pilot programs, including Ventura County in southern California. In 1991, the California Legislature enacted a statute authorizing a pilot program in one county to test the feasibility of a day-fine system. Mahoney (1995) pointed out that initially, no courts in California were willing to attempt this novel fine system, but in 1993, judges in the Ventura Municipal Court agreed to try on the contingency that the program receive approval by



the county board of supervisors. Upon approval, state judicial leaders selected Ventura County as the pilot program site. However, the plan was stopped before entering the implementation phase and was officially ended in 1995. The reasons behind the failure of the Ventura County day-fine pilot project is central to my exploration of how to implement such a system in California today. These reasons are featured in the methodology section and formed the primary basis for the interview questions that I directed to California judicial experts.

### **Benefits of Day-Fines**

Before delving into why California rejected a day-fine pilot program, I think it is important to review the literature that covers some of the benefits of day-fine systems as observed in other locations, or the potential benefits described by researchers if such programs are fully implemented. This helps underscore that day-fines are not somehow theoretically untenable or otherwise fundamentally unfit as a reform measure, but rather the coordination and collaboration aspects of planning and implementation in California during the Ventura pilot program were sorely lacking. In this section, I discuss several themes that emerge in the prevailing literature on day-fines: improved fairness, efficiency enhancements, and reduced rates of incarceration.

#### ***Improved Fairness***

Day-fine programs primarily aim to improve fairness in assessing fines. Defining fairness—an amorphous concept particularly in criminal justice—falls outside the scope of this thesis. Nonetheless, a functional definition in this context might be proportionality, in the sense that a judge should, ideally, weigh any mitigating factors that dwell between the offense and the offender and to decide upon a sanction that achieves justice without imposing excessive burden. Winterfield and Hillsman (1993) noted that during a Staten Island day-fine experiment in 1987, the courts provided fairer punishments in terms of setting fines that were not overly burdensome and proportionate to the severity of the offense. McDonald et al. (1992) reviewed the Staten

Island program as well, highlighting similar improvements to fairness in that judges gave out a wider range of fines than was permitted under a tariff regime, perhaps showing that judges used the new system to better differentiate among offenders of varying income levels. Some jurisdictions operating under tariff systems do allow judges to consider income in assessing fines. In California traffic courts for example, the offender must request an additional ability-to-pay hearing, a process that is both inconsistently applied across the state and most California drivers are unaware of this option (Case & Bhattacharya, 2017).

### ***Efficiency Enhancements***

Efficiency, in the context of punitive fines, is a bit easier to define than fairness. If the court is spending less time and fewer financial resources on enforcement and more offenders are paying their fines in full, then the system may be reasonably called efficient. According to McDonald et al. (1992), results from an experimental day-fine program in the Milwaukee Municipal Court in 1989 showed that a day-fine system increased collection rates and reduced administrative costs associated with non-payment and required no additional collection enforcement efforts. This is particularly noteworthy because in the Ventura County pilot project, no legislative appropriation was made available for offsetting the court's automation improvement costs, one of many obstacles that contributed to the program's failure (Mahoney, 1995). Mahoney (1995) noted that some members of the planning committee were familiar with other pilot programs, such as those conducted in Staten Island, NY and Phoenix, AZ, but they may not have conducted enough research of prior implementations to understand that day-fine systems could be implemented without expensive overhauls of enforcement procedures.

Experimental day-fine programs in Richmond County, New York and Polk County, Iowa also attested to an increased rate of payment for criminal fines under a day-fine system: in Richmond County, rate of compliance (full payment of fines) rose from 76 percent to 85 percent

and rates of at least partial payment rose from 78 percent to 94 percent (Vera Institute of Justice, 1995). The Vera Institute of Justice (1995) also found similar improvements in compliance in Polk County, Iowa, with rates of full payment leaping from 32 percent to 72 percent and at least partial payment rising from 45 percent to 85 percent. High repayment rates indicate offenders are more able to afford their citations, but there is also the additional benefit of fewer administrative costs and procedures, as well as fewer jail sentences for failure to pay.

### ***Reduced Rates of Incarceration***

Day-fine systems can potentially reduce incarceration rates in two important ways. First, if offenders are better able to afford their fines, they are more likely to comply and less likely to be issued a warrant for failure to pay. As the evidence regarding efficiency described above portrays, day-fine systems indeed contribute to higher rates of full payment. Second—as noted in Turner and Petersilia (1996)—reform proponents have argued that day-fines could be developed as another instrument of intermediate sanctions—along with probation and community service—and that having a wider array of sentencing options means judges could use day-fines in lieu of jail. However, I want to note that empirical research on day-fines as a method to reduce incarceration in the U.S. remains tentative and there is not yet consensus. Winterfield and Hillsman (1993) noted that in the Staten Island program, day-fines did not appear to definitively change judge's sentencing habits and, in fact, a small increase in jail sentences did occur for certain drug offenses. In contrast, information on established European day-fine systems is more conclusive. Vera Institute of Justice (1995) explained that day-fines in West Germany substantially reduced short-term prison sentences of less than six months by 90% between 1968 and 1976, compared to previous years. While this lack of agreement in the literature highlights the need for more research, the information gleaned from pilot programs in the United States

indicates that day-fine systems bring tangible benefits in the area of criminal justice reform. This raises the question: why did such a reform fail in California?

### **A Failure to Frame**

Mahoney (1995) wrote the pivotal work on why the day-fine pilot program in California failed. His report, *The Ventura Day-Fine Pilot Project*, detailed the planning process and decision to terminate the program and it serves as a post-mortem assessment of the obstacles that ultimately hindered implementation. I found it striking that the obstacles to success seem to fit well into the frames described by Bolman and Deal (2013) as a way of understanding organizational design and function. These frames include: (a) structural, (b) human resources, (c) political, and (d) symbolic/cultural. The alignment between the frames described by Bolman and Deal and the findings of the Ventura day-fine pilot indicate that the impediments to success in Ventura entailed fundamental organizational problems in implementing the policy idea rather than a case of ill-fitting or poorly crafted policy. Put simply, the architects of the program may have underestimated the importance of engaging stakeholders outside of the planning committee and this made it difficult to navigate the organizational complexities inherent to implementing such a system. Below, I will briefly describe and categorize under the relevant frames the major shortcomings that Mahoney details in his report. In the methodology section, I will springboard from Mahoney's findings to address thematic elements that would impact the implementation of a day-fine system in today's California courts with input from judicial experts.

#### ***The Structural Frame***

Bolman and Deal (2013) explain that the structural form of an organization is like an animal's skeleton or a building's framework and that this structural form enhances and constrains what an organization can accomplish. They further describe how that structure serves as a kind of blueprint of expectations for internal and external players. Mahoney (1995) found that a poor

structural foundation plagued the Ventura Day-Fine Program from the beginning, in that the Judicial Council, the group authorized by the legislature to run the program, struggled to find a court and county board of supervisors willing to participate. Mahoney found that the Judicial Council did not cultivate a *champion* among the judges who would be on the front lines of implementing the program. This failure to establish a solid leadership structure with clear expectations and guidelines, set the stage for conflicts that would ultimately doom the project.

### ***The Human Resources Frame***

Day-fine systems require access to the defendant's personal financial information in order to calculate the fine amount. Judges raised concerns that the Ventura Municipal Court staff would be bogged down by processing the high volume of cases the court expected to face, in particular if high income defendants began to request jury trials when staring down larger-than-usual fines (Mahoney, 1995). However, Mahoney also noted that interviews conducted with Ventura judges and court staff after the program was cancelled indicated that the staff were indeed willing to handle the workload challenges, with one committee member commenting, "The project could have gone forward. We don't know what the outcome would have been, but we would have learned from it. The staff would have been able to make it work operationally" (Mahoney, 1995, p. 40).

These contrasting views on how judges and staff would have handled the new workload indicate that the Judicial Council may not have sufficiently considered the human resources side of the organizational equation. Shafritz, Ott, and Jang (2015) discuss how interactions between people in the organization and the organization itself shape the "conceptualizations of jobs, human communication and interaction in work groups, the impact of participation in decisions about one's own work in general, and the roles of leaders in particular" (p. 128). If the Judicial

Council and stakeholders exercised better communication about workload and staffing, perhaps workload concerns would not have risen to the point where they imperiled implementation.

### ***The Political Frame***

Bolman and Deal (2013) described how the political frame views organizations as arenas where interests compete for power and conflict thrives due to differences in needs, perspectives, and lifestyles. The Ventura Municipal Court is no exception and, like any courthouse, featured dueling political views and interests. Mahoney (1995) explained that judges' statements made during the planning period and in interviews conducted after showed stark differences in how they viewed day-fines, which reflected their views and values on criminal justice. Mahoney provided numerous comments from judges in his report, but two contrasting yet illustrative comments include (1) "The advantage of day-fines is fairness. You can impose a sanction that will have equivalent impact on rich and poor;" and (2) "Day-fines are unequal and unfair. They discriminate against the well-to-do" (Mahoney, 1995 p. 38). While the day-to-day business of the criminal justice system aims to transcend politics, it can nonetheless seep into the court room given that most judges in the United States are elected through a political process (Morrison, 2007). Criminal reforms that could be construed as too soft on either crime or criminals faced uphill battles in both public opinion and in the courts at various times in recent U.S. history. As Mahoney (1995) pointed out, no courts at the time were initially willing to volunteer to be in the pilot program, perhaps reflecting a lack of political will to do so.

### ***The Symbolic/Cultural Frame***

Mahoney (1995) explained at length the revenue concerns surrounding the Ventura day-fine program and notes the County's Board of Supervisors and Administrative Office worried that the pilot project could result in a loss of fines and fees if pinning citations to offender's incomes reduced aggregate fine amounts. Their concerns stemmed from a regulatory requirement that

Ventura County must remit to the State of California the same amount of fine revenue as it had in 1992-1993, meaning the county would be responsible if day-fines caused revenues to dip below normal. Technical limitations at the time meant the county had no way to predict which way total revenues would go because the computer systems could not retrieve current sentencing patterns on cases that might be eligible for day-fines (Mahoney, 1995). The judges and court staff did not share these same concerns because their professions involve different goals and divergent cultural values. Mahoney described how judges and court staff did not consider themselves "revenue producers" (p. 41). Mahoney notes that some judges bristled at the concept that some offenders would be subject to much higher fines in the pilot program as compared to a tariff system, likely due to the views the judges held on fairness in the context of justice. Judges plainly did not want to base their legal decisions on the current status of the county coffers. However, county officials, court administrators, and the local government viewed higher revenues in a much more positive—and perhaps practical—light. The Ventura day-fine pilot project faced long-shot odds to success considering the stakeholders' divergent cultural values and widely varying views on their respective symbolic and professional roles.

The body of literature on day-fine pilot programs, in particular the one attempted in Ventura County, describes the difficulty of achieving policy goals that require implementing complex administrative structures involving many different stakeholders. In the case of day-fines, the policy itself is predicated upon an idea of justice defined largely by proportionality, which is subjective and informed by the experiences and culture to which judges belong. This concept of proportional justice underlying day-fine systems challenged the values held by some of the judges, who carried a lot of weight in the planning and decision-making process for the Ventura pilot project. Despite the success of day-fine pilot programs in other parts of the United States that showed efficiency improvements and reduced rates of incarceration, the stakeholders in

Ventura were unable to achieve consensus and commit fully to the process. As I read more about the various moving pieces of the Ventura day-fine pilot project, I began to wonder if the landscape of California courts was the same today as it was three decades ago. Had technology improvements helped iron out data management challenges? Had judges' attitudes on proportionality in the context of court fines and fees nudged in one direction or the other? Were there any looming administrative obstacles? Would a day-fine pilot program now inspire stakeholders to champion that cause in today's environment? Finally, what would be the best way to gather and evaluate this information?



### **Chapter 3: Methods**

For this thesis, I conducted interviews with experts or obtained responses from them to short questionnaires, reviewed papers on prior day-fine pilot programs, and referenced a report on a traffic fine reform program currently being implemented. In this chapter, I will describe my reasoning behind choosing these methods and provide details on the question selection process and how the interviews were conducted. I found that both the nature of the data available and the advantages that semi-structured, in-depth interviews can bring helped to guide my choice of method.

The information gleaned from day-fine pilot programs carried out around the United States does not lend itself well to quantitative approaches. Much of the data was collected in the late 1980s and early 1990s and are not in a digitized form that would facilitate the application of common quantitative and statistical tools like Stata or R. Furthermore, the purpose of this thesis is not necessarily to explore any causative relationships between variables, but instead seeks to answer what challenges and obstacles might now stand in the way of implementing a day-fine pilot program in California. The prevailing literature on day-fines systems—in particular the 1995 Mahoney paper on what went wrong with the Ventura day-fine pilot project—provides extensive descriptive data on the historical context surrounding the processes and decision making of these various programs. As I read through these materials, I could not help but wonder if the technological developments and political shifts that have occurred over the last several decades have changed the landscape for fine and fee reform policies. Qualitative methods are ideal for determining the reasoning of decision makers and how that may have changed as a consequence of changes in the technological environment. For these reasons, I chose a qualitative approach that focuses on evaluating current information from relevant court and program experts as well as comparable successful pilot programs on fee reforms.

## **Interviews Versus Surveys**

I initially intended to create a short questionnaire to send to all respondents using essentially the same set of questions. I planned to code their responses to see how well they fit my hypothesis that prior obstacles like technology problems and judicial attitudes impeded the success of the Ventura day-fine pilot project. However, upon further review and with advice from my primary advisor, I began to see that a questionnaire format alone might severely limit the data I got from respondents. If the respondents used terminology or acronyms that I did not understand or if a response hinted to a wellspring of information but stopped short of revealing it, I would have few ways to capture that data. Singleton and Straits (2010) described how in cases where the researcher is not seeking quantitative precision, but rather an understanding of the respondents' experience, an unstructured interview allows for maximum flexibility. As a hybrid between structured and unstructured, I thought the semi-structured approach would best achieve my goals because my set of questions would serve as a guide, but I would still have the flexibility for probing questions and creating new questions as the interview progressed.

The story of the Ventura day-fine pilot project, like any policy endeavor, contains a rich narrative of the interactions and conflicts between stakeholders vying for resources and influence. I utilized semi-structured interviews of experts who either had direct knowledge of the Ventura pilot project, had participated in it, or who are currently working on similar pilot programs. In one case a respondent was not available for an interview and I sent a questionnaire instead. While the questionnaire responses were still useful, the limitations of the questionnaire method became quite apparent.

## **Selection of Questions**

Prior obstacles to the success of the Ventura County day-fine pilot project included stakeholder concerns about administrative workload, technology restraints, and judges' attitudes

on whether day-fines sufficiently serve the cause of justice. I hypothesized that some of these obstacles may no longer be as significant, particularly in the case of technology because tools like workflow and case management software have been widely adopted in US courts to improve the reliability and efficiency of case filings (Greenwood & Brinkema, 2015). However, the adoption of new technology does not necessarily mean that the values held by judges would change because software is merely an administrative tool. In selecting my questions for each expert, I thought it was important to compare the judicial attitudes that prevailed in the 1990s with those that might be found today.

### ***Question Structure***

Before securing interviews with respondents, I compiled a list of questions that I thought captured the issues described in Mahoney's (1995) article on Ventura day-fines. The questions below were not crafted with any particular interviewee in mind. I later refined these questions and customized them based on who the respondent would be once I scheduled the interview. Given the variation in the areas of expertise of the respondents, it made sense to craft specific interview questions to better gain information from their experiences.

#### **Initial Questions.**

##### **Technology**

1. Has the implementation of technology helped ease/ reduce administrative workload in general? Has it helped ease/reduce workload specifically during times of high case volume? If yes, how so?

##### **Judge's Attitudes**

2. Among current active California judges, is it generally known or believed that legal financial obligations create significant problems for indigent defendants or that LFOs may cause disproportionate harm to low income defendants?

3. Among current active California judges, is there a general knowledge of day-fines or other methods of graduated economic sanctions?
4. Are reforms that seek to reduce fines and fees on the indigent generally favored or disfavored by current active California judges?
5. Do current active California judges show a willingness to attempt fine or fee reforms in their courts?
6. Among current active California judges, are there significant concerns of being viewed as "soft on crime"?
7. For current judges who may be dubious about the efficacy or feasibility of day-fine systems or other graduated economic sanctions, what kinds of concerns do they raise?
8. Do current active California judges who are familiar with day-fines or other graduated economic sanctions hold significant constitutional concerns surrounding means testing for such programs?
9. Do current active California judges consider court revenue important in considering potential reforms to fine and fee administration?

#### **General Implementation Obstacles**

10. When reforms or changes are proposed in the court system now, what sorts of obstacles to implementation arise? Are the obstacles practical (e.g. workload, administrative) in nature, legal (constitutional rights), or philosophical (e.g. involving the judge's own ideas about fairness)?

#### **Planning Phase and Judge Participation**

11. Are judges often consulted with or collaborated with during the planning phases of court reforms? Why or why not?

## **Interview Methods**

I refined the eleven questions shown above as it became clear who I would interview and what their area of expertise was. Although I inquired with the California State University Sacramento online decision tree for human research subjects, the questions did not meet the criteria for requiring Institutional Review Board (IRB) clearance because the information collected was not about the interviewees, but rather their opinions and thoughts on court policies, legal procedures, and historical events. I shortened the number of questions from eleven to between six and nine questions, depending on the respondent and subject area. I conducted the interviews based on respondent preference: Two out of the four respondents were available for a Zoom meeting, an online platform for video conferencing. One respondent was only available for a phone interview and the remaining respondent was only available for a questionnaire submitted via email. I provided a draft version of this thesis to the respondents that I interviewed and some offered corrections and advice, which I have incorporated where appropriate.

My advisor recommended taking a journalistic-type approach to the interviews, wherein I would request permission to record the interview and ask if the respondent is comfortable being quoted directly. California law requires two-party consent to record, so I made sure to request to record the Zoom interviews both via email before the interview and orally just before starting the recording software. I used a transcribing service for the two interviews conducted via Zoom and used contemporaneous notes from the phone interview. The remaining respondent provided responses to written questions via email. Each respondent was interviewed or sent a questionnaire only once.

## **Respondents**

For the data collection process, I sought out the following four people: 1) James Brighton, current lecturer and program advisor for the Center for California Studies at CSU

Sacramento (Zoom interview); 2) Alyssa Hunt, a graduate student and Judicial Administration Fellow with the Judicial Council of California (Zoom interview); 3) Sheila Calabro, prior surname Gonzalez, former executive officer of the Ventura Superior Court and planning committee member during the Ventura day-fine pilot project (phone interview); and 4) Barry Mahoney, author of the report on the Ventura day-fine pilot project, president emeritus of the Judicial Management Institute, and consultant on the Ventura day-fine pilot project planning committee (email questionnaire).

The interview respondents seemed comfortable with my questions as well as the subject matter and each were generous with their time. During the interviews, some respondents requested clarification on the terminology I used, my methodology, or the general goals of my research. The duration of the interviews varied: Mr. Brighton offered over an hour of his time, Ms. Hunt spoke with me over her lunch break for eleven minutes, and Ms. Calabro responded to my questions in thirty-one minutes. Mr. Mahoney did not answer six out of nine emailed questions because he felt his lack of recent contact with California judges on the subject of day-fines meant his information might be outdated. While Mr. Mahoney did not answer all of my questions, his email responses were very timely and he generously provided a PDF copy of his report on the Ventura day-fine pilot project, which had recently become unavailable online.

Prior to contacting these respondents for interviews or to send a questionnaire, I used online resources to learn as much as possible about their current roles and prior experience to ensure my questions were relevant. For the two respondents I interviewed via Zoom, Mr. Brighton and Ms. Hunt, I sent my written questions to them ahead of time, although in both cases I asked additional questions that I had not written down. The prepared questions I used for each respondent are found below, while extemporaneous and probing questions will be discussed informally in the findings section based on the response content that inspired them.

**James Brighton interview questions (via Zoom)**

1. Has the implementation of technology, in California courts, helped ease/ reduce administrative workload in general? Has it helped ease/reduce workload specifically during times of high case volume? If yes, how so?
2. What are biggest challenges right now regarding moving ahead with a day-fine system?
3. Do you think the primary obstacle is judges?
4. Do you think a primary obstacle is concerns about revenue?
5. Do court administrators have concerns about the practicality of day-fines?
6. Is there anything that I missed?

**Alyssa Hunt interview questions (via Zoom)**

1. Why were the courts in Shasta, Tulare, and Ventura chosen as the initial pilot courts? Was there a selection process?
2. What types of challenges arose before and during implementation? Were they primarily technical issues? Were there resistant or unwilling stakeholders (judges, clerks, court administrators, etc.)?
3. How were these challenges dealt with?
4. Were there any concerns about revenue loss?
5. Right now the system uses a single-direction interface (court clerks still have to update information). Why wasn't the bi-directional option available for initial implementation?
6. Is there anything that I missed?

**Sheila Calabro interview questions (via phone)**

1. Can you explain the role of a Chief Executive Officer of the Court?
2. What was your involvement with the Day-Fine pilot program?

3. You mentioned in our brief first call that the day-fine pilot project was a bit before its time. How was it before its time?
4. Were the concerns primarily about workload and new processes or about the values and political culture of the judges?
5. What were your primary concerns surrounding this day-fine pilot program from the perspective of your role in the Ventura municipal court?
6. Do you think if a court were to attempt to implement a day-fine program now, would it have a better chance of success? Why is that?
7. What advice would you have for the CEO of that court or courts?

**Barry Mahoney short questionnaire (via email)**

1. Among current California judges, is it generally known or widely understood that legal financial obligations create significant problems for indigent defendants?
2. Are reforms that aim to reduce fines and fees on the indigent generally favored or disfavored by current California judges?
3. Do current California judges show a willingness to attempt fine or fee reforms in their courts?
4. Among current California judges, are there significant concerns of being viewed as "soft on crime"?
5. Do current California judges who are familiar with day-fines or other graduated economic sanctions hold significant constitutional concerns surrounding means testing for such programs?
6. Do current California judges consider court revenue important in considering potential reforms to fine and fee administration?



7. Are California judges often consulted with or collaborated with during the planning phases of court reforms? Why or why not?
8. What is the biggest challenge regarding moving ahead with a day-fine system now as opposed to 25 years ago?
9. Am I missing anything you would like to add?

The flexibility to ask probing questions to stretch past the limitations of more rigid approaches opened new lines of thought and made me view some of my previous ideas on the Ventura day-fine pilot project in a new light. For example, the role of judicial culture as described by Ms. Calabro was not as restrictive as some of the literature described. Her responses revealed a professional camaraderie and dedication to duty that prevailed despite strong disagreements among judges and other stakeholders. This observation, and others, revealed important connections between themes that made me rethink how I might want to structure the analysis of my findings.

### **Thematic Approach**

I ultimately used a thematic approach to describe the results of my interviews and responses to my questionnaire, as well as analyze relevant readings. I initially thought that reporting the responses sequentially in the order each respondent was interviewed and in the order each question was asked would be sufficient to describe the data. However, as I progressed through the interviews, I noticed that the style of the interviews themselves, whether long or short or whether direct or roundabout in response, meant that context would be lost if I failed to connect the responses with each other and with the broader themes I sought to examine in this thesis. I also found that exploring the interconnectedness of these themes was critical for understanding the bureaucracy of courts as well as how they function and address policy changes. I decided it would be more productive to analyze the responses as they fell under the following

themes: Technology improvements, judges' attitudes, administrative challenges, and stakeholder engagement. These themes informed the content of my questions and were identified in the Mahoney final report on the Ventura day-fine project as prominent themes during that reform effort. In the next chapter, I discuss how these themes interconnect, provide historical context for some of the failings of the Ventura day-fine pilot project, and begin to synthesize this information to consider how it would impact the implementation of a day-fine system in today's environment.

## **Chapter 4: Results**

When I began this thesis, I had spread before me numerous articles and reports describing an intriguing policy idea, an idea that leveraged proportionality in justice and promised to alleviate the poverty trap that many Americans had fallen into when they encountered the criminal justice system. Some articles described the benefits of day-fines and highlighted potential cost savings in terms of less jail time and higher collection rates with low administrative costs. Yet somehow, despite numerous pilot programs in the 1980s and 1990s, day-fine systems never caught on. Even the nation's most populous state, California, which has long had a reputation for setting the regulatory tone for the nation, had tried but failed to implement a day-fine pilot program. I wondered why this happened and if there were perhaps a single, unsurmountable reason preventing day-fines from being implemented.

As I interviewed respondents and reexamined the articles on day-fines, I noticed that it was not just a single obstacle that prevented day-fines from taking hold, but instead several themes emerged. These themes were technology improvements, judges' attitudes, administrative challenges, and stakeholder engagement. Generally speaking, these themes factor into implementing a day-fine system as follows: (1) Technology improvements are necessary for managing caseloads and for tracking the results of a day-fine system; (2) Judges' attitudes set the tone for how day-fine reforms will be received and represent where the rubber meets the road in terms of the day-to-day operation of the courts; (3) Administrative challenges encompass all other operational objectives involving day-fines that occur outside of the court room, from budgeting, to sourcing technology vendors, and to managing data; and (4) Stakeholder engagement is critical for ensuring all parties are on the same page and for managing risk such that a failure in one stage of implementing a day-fine system does not cascade into the collapse of the entire program.

As I pressed on in my research, I found that these themes were more than just siloed categories under which challenges could be classified. They were more like interconnected puzzle pieces, with each theme being joined to the others. For example, technology improvements are necessary to manage the financial information of the defendants and to track fine collection information over time, but such a system must be properly maintained by administrators and the analytics reviewed regularly to ensure program efficacy, which highlights the administrative challenges. Even before tracking software is in place, administrators must coordinate funding with county-level stakeholders to pay for it and handle the practical aspects of implementing it in the courtrooms with the cooperation of the judges who would be using it. I found that nearly every step of implementing a day-fine system involves technology, administrators, judges, and stakeholders.

In this chapter, I will describe the background and historical context of these themes, where applicable, as well as detail how they connect with one another. Mahoney's 1995 post-mortem white paper on the failed Ventura day-fine pilot program described technology problems as one of the primary stumbling blocks, so I felt technology improvements are a good place to begin.

### **Technology Improvements**

At first glance, it would appear California courts would be uniquely situated to implement new technology given that the state is home to Silicon Valley and that trials require massive volumes of data to be securely processed, even for a single case. However, in practice this has not often been a successful endeavor. In the 1980s, California courts experimented with implementing barcodes and a scanning system called STATSCAN to improve inventory control and the security of evidence (Marcotte, 1987). The STATSCAN system showed significant potential for facilitating case management and other applications, like improving the collection

and analysis of statistical data, but the project failed to overcome financial and training problems ("Legislative Counsel Bureau 1990-91," 1990). This doomed both the project itself and derailed implementing technology in a broad-scale fashion for nearly a decade in California courts (J. Brighton, personal communication, April 4, 2020).

The California Legislative Analyst's Office (LAO) findings on STATSCAN described poor fiscal management, inadequate communication, and difficulties in training staff on the new technology ("Legislative Counsel Bureau 1990-91," 1990). Staff training on the bar code system was a known issue even before the LAO recommended cutting funding for the program. Koenig and Jayne (1990) explained that success of the program would hinge upon adequate training, support, and commitment to thorough implementation. Unfortunately, cost overruns and planning failures were enough to end the program. A similar debacle occurred twenty years later with the California Case Management System (CCMS). This system was intended to automate court operations across the state and replace 70 different legacy systems (Krigsman, 2012). Like STATSCAN, cost overruns plagued CCMS and the California Judicial Council terminated the program.

In my interview with Mr. Brighton, he discussed how these historical failures have left the judiciary far behind and unprepared for the virtualization of much of their work (J. Brighton, personal communication, April 4, 2020). While implementing a day-fine system is not the same as installing new information technology in the courts, it does nonetheless require large-scale data management. Mahoney (1995) recommended that any future day-fine project would need an information base and fines management information system so that court staff could monitor the receipt of fine payments, start appropriate action in cases of non-payment, gather statistics on collections effectiveness, and facilitate policy revisions as needed. Ms. Calabro explained to me as well that the acquisition of statistics and verification—both of which affect staff workload—

were prominent concerns during the Ventura day-fine pilot project when she was chief executive officer of that court (S. Calabro, personal communication, June 4, 2020). This highlights one of the intersectional issues that became apparent through these interviews: technology implementation does not occur in a vacuum. It requires engaging the human resources lens described earlier in this thesis, in terms of ensuring proper skills training for the staff who will use it and for the vendors who will maintain it.

This interconnectedness of technology and the human resources frame also appeared in my interview with Ms. Hunt, who is involved with a pilot program for online traffic adjudication and ability-to-pay. This program bears some similarities to a day-fine system in that the aim is to reduce the impact of high fines and fees that low-income people face. The online system, called MyCitations, allows users to request fee reductions based on their ability to pay and also handles routine court functions in lieu of potentially expensive court appearances (Wright, 2020). The pilot program for this online system initially began in the three California counties of Ventura, Tulare, and Shasta with plans to expand into San Francisco and Monterey counties (Wright, 2020). El Dorado county volunteered as well, but technical issues precluded further participation.

The MyCitations system works by interfacing with the county court's case management system to relay and update information about each user's case. However, because these case management systems are not uniform and are maintained by different vendors, MyCitations would not connect properly with El Dorado county's system (A. Hunt, personal communication May 15, 2020). This is perhaps a vestige of the failure to implement the unified CCMS as I described before. El Dorado county's inability to participate shows that otherwise effective technology will not work an organization cannot integrate it with existing IT infrastructure.

Judges' attitudes toward reform programs are an important factor in the success or failure of program implementation. Judges' attitudes can set the tone for either acceptance of or

resistance to the implementation of policy changes. Ms. Calabro described how judges wield considerable influence inside and outside of their courtrooms and that they are the bosses in the realm of the court. (S. Calabro, personal communication, June 4, 2020). In the next section, I will discuss the influence that judges' attitudes have on the success or failure of potential reform measures.

### **Judges' Attitudes**

For the purpose of this thesis, judges' attitudes will refer to judges' views on specific reform programs as well as to judicial culture in general. Given the power judges wield in their courtrooms, the judicial culture to which they belong plays a significant role in shaping the environment of the legal bureaucracy. There is a lot of academic writing on the subject, but one of the most effective descriptions I have encountered is Bourdieu's (1987) discussion of juridical culture—the culture surrounding judicial proceedings and the administration of law—of which judicial culture is a part. Bourdieu (1987) explained that "the juridical field, like any social field or group, is organized around a set of internal protocols and assumptions, characteristic behaviors and self-sustaining values that might be called a legal culture" (p. 806).

As far as describing what the source of this culture might be for California judges, Mr. Brighton went into some detail with me about how judicial culture is instilled early on in the professional career of a judge. He mentioned that the first thing he sees that connects with how the judicial administration changes and adapts to something new is the sense of precedent impressed upon judges during law school, as all judges in California are lawyers by training (J. Brighton, personal communication, April 4, 2020). Mr. Brighton described that precedent, or *stare decisis*, informs not just what happens from the bench during a trial, but is emblematic of a strong cultural pull toward incremental, marginal changes among the judiciary, an institution that

is described as looking at the future from the rearview mirror (J. Brighton, personal communication, April 4, 2020).

Mr. Brighton also detailed how the judicial branch is a check on the excesses of the other two branches of government in the broader governmental sense, but it also serves as a counterweight against the tyranny of the majority (J. Brighton, personal communication, April 4, 2020). In Brighton's view, any reform program like a day-fine system, must be viewed as achieving both stability and fulfilling a greater institutional purpose in order for it to be embraced by judges. In the case of the Ventura day-fine pilot project, Judge Cloninger, a judge who had not been on the planning committee raised concerns that the pilot program would disrupt this stabilizing/counterweight role of the courts. Mahoney (1995) summarizes Judge Cloninger's opposition as follows: (1) Day-fines would create disparities in fine amounts between Ventura and nearby non-participant counties; (2) Day-fines impose different fine amounts on offenders based on income and would therefore involve discrimination based on wealth and so run afoul of equal protection rulings; (3) Day-fines require the release of defendant financial information in order for the court to determine the appropriate fine, which could be interpreted as violating the Fourth Amendment of the U.S. Constitution and Right to Privacy provisions in the California Constitution; (4) Day-fine amounts are determined by the court and could be viewed as a breach of the separation of power principles. Enumerated thusly, this judge's reservations were guided as much by a prevailing judicial culture that seeks to balance the rights of the individual and ensure the proper role of the court as they were influenced by a legal orthodoxy of what constitutes a just penalty.

This is not to say that the other judges involved with the Ventura project harbored entirely insurmountable doubts about stability and the role of the court vis-à-vis day-fines. Ms. Calabro described how the judges involved with the project gave an earnest effort during the



project, despite—as Ms. Calabro bluntly noted—the heart of the court was not in it (S. Calabro, personal communication, June 4, 2020). The political environment during the 1990s in Ventura could be described as not particularly welcoming to reform efforts that were viewed as being too liberal or too soft on crime (S. Calabro, personal communication, June 4, 2020). Ms. Calabro communicated to me that the other judges involved with the project held the Chief Justice of California, Malcolm Lucas, in high esteem (S. Calabro, personal communication, June 4, 2020). Judge Lucas also served as Chair of the Judicial Council, who in that capacity made the request for Ventura's participation in the program (Mahoney, 1995). Despite philosophical and political differences, all judges on the committee provided respectful discourse during the planning stages (S. Calabro, personal communication, June 4, 2020).

In my view, this means that it is possible for reform efforts to achieve at least some consensus by building upon established rapport and mutual respect in the face of resistance from a judicial culture that is reticent to change. Building and maintaining this rapport is among the many duties of the court administrator, who must juggle practical concerns like scheduling and staffing as well as possess the diplomatic skills to shepherd the powerful and opinionated into a smooth and efficient system of justice. While some of the tools available to manage such a complex system have changed over time, the challenges facing a court administrator remain largely the same in terms of implementing reforms.

### **Administrative Challenges**

Ms. Calabro, the chief executive officer of the Ventura Municipal Court during the day-fine pilot program, described her job to me as serving in a representative role for all non-judicial staff and being the primary manager of the budgets, programs, and statistics of the court (S. Calabro, personal communication, June 4, 2020). In terms of the day-fine pilot project, she held a prominent role on the planning committee and represented specifically the interests of the

Ventura Municipal Court Clerk's Office (Mahoney, 1995). This involved balancing practical court concerns such as gathering information and statistics, balancing staffing workload, and managing the court's need for resources and revenue (S. Calabro, personal communication, June 4, 2020). Additionally, Ms. Calabro had a central role in building rapport between different factions within the court and addressing the concerns they might raise. It is this role of court administrator that I believe best exemplifies the interconnectedness of the themes in this thesis. Technology improvements, judge's attitudes, and stakeholder engagement each fall under the purview of the court administrator. Ms. Calabro explained that during the pilot project, she understood how the technology requirements for collecting sentencing information would affect workload, she could also predict how the judges would react due to her relationships built over time (S. Calabro, personal communication, June 4, 2020). Ms. Calabro noted that she felt a strong connection to the court and the community and believed that the pilot project would lead to a fairer approach in assessing fines (S. Calabro, personal communication, July 30, 2020).

The budgetary impact of reform policies was very much on the mind of Ms. Calabro. Depending on jurisdiction, fines and fees collected from defendants have been and still are a source of funding for programs like victim restitution, as well as non-judicial branch operations, such as probation (Harris, 2016; Bender et al., 2015; S. Calabro, personal communication, June 4, 2020). Mahoney (1995) explained that judges in Ventura did not think of themselves as revenue producers because doing so would run counter to their professional ethics as administrators of justice. Clerks and administrative officers, however, do have to consider how their programs will be funded. Ms. Calabro responded to my question as to whether a day-fine system would be easier to attempt today by mentioning that while the political climate has changed and evolved since the Ventura pilot project, revenue is still a prominent concern (S. Calabro, personal communication, June 4, 2020).

Mahoney (1995) explained that some revenue concerns during the Ventura pilot project surrounded Section 1463.001 of the Penal Code, which requires the county to remit to the state the same amount of fine revenue from the previous year, otherwise the county would be on the hook for the difference. Once again, the interconnectedness of themes is relevant here: during the implementation of a day-fine or any other reform that would impact fee revenues, court administrators would need IT solutions to be able to track day-fine payments and revenues over time to plan for any shortfalls. Mr. Mahoney's questionnaire response mentions this as well, in that administrators still lack comprehensive information on the use of fines and other monetary sanctions throughout the state and even at the local level (B. Mahoney, personal communication, April 7, 2020)

Mr. Brighton described that for judicial leadership and administrators to support a current day-fine pilot program, the program would need to utilize the following formula to succeed: (1) The project should start small, ideally in a single courtroom; (2) It must show value quickly; (3) If you cannot show value quickly, quit the program, but if you are able to succeed, do so in a way that can be scaled up (J. Brighton, personal communication, April 4, 2020). The planning committee behind the MyCitations online fee adjudication project appears to have made better administrative preparations as compared to what Mr. Brighton and Ms. Calabro had to say about the Ventura day-fine pilot project. MyCitations is supported through an appropriation of \$3.4 million in new operational funding and \$1.3 million in ongoing funds (Wright, 2020).

Furthermore, the Judicial Council will host and maintain the software, leaving the court staff with a limited workload impact except for system administrators who approve users, adjust software settings, and monitor case management system settings (Wright, 2020). Wright (2020) does mention that ultimately, as the project scales up, more court processes will shift to an online setting, further reducing court staff workload by eliminating some court hearings and

appearances. In my view, the current success of the MyCitations system is due to sound planning and good stakeholder engagement. In the next section, I will discuss what went wrong with the Ventura day-fine pilot program in terms of stakeholder engagement and how a current day-fine program could build upon the success of the MyCitations system.

### **Stakeholder Engagement**

Stakeholder engagement for the purposes of this thesis refers to the communication between and the participation of interested parties to a reform effort. In the case of the Ventura day-fine pilot project, there was a broad range of stakeholders, ranging from Senator McCorquodale, who first introduced the legislation for the day-fine project, on down to the local level in Ventura with the planning committee for the project (Mahoney, 1995). Mahoney (1995) noted that the planning group included just about every profession and institution with a connection or interest in the operations of the project: municipal court judges, officers from the superior and municipal court clerk's office, attorneys from the district attorney's office and the public defender's office, members of private bar associations, county government officials, members of the California Judicial Council, representatives from the California Administrative Office of the Courts, as well as consultants and researchers. I described some of the shortcomings of the committee earlier in the thesis wherein the architects of the program may have underestimated the importance of thoroughly engaging all stakeholders, particularly those outside of the planning committee, and this made it difficult to navigate the organizational challenges inherent to implementing a pilot project for reform.

Mahoney (1995) pointed out that one of the most outspoken critics of the day-fine program was Judge Cloninger, who was a recently appointed judge who would have presided over one of the higher volume arraignment courts when the pilot project would be underway. Judge Cloninger's specific points of contention with the project were detailed previously, but he

attended no planning sessions and his strong opposition was unknown to the planning committee (Mahoney, 1995). However, Ms. Calabro disputes this and claims that Judge Cloninger's doubts were widely known (S. Calabro, personal communication, July 28, 2020). It is possible that Judge Cloninger's contentions were not recorded during the planning committee meetings. Nonetheless, this seems like a significant oversight in terms of engaging and communicating with everyone who would potentially be involved in the operational stages of the project. In contrast, the MyCitations online traffic adjudication project appears to have done a better job partnering with and engaging several participating courts. The Judicial Council of California had received grant funding from the U.S. Department of Justice for the project and worked with partner courts to design the online system, which included testing the system with each court's case management system and identifying online workflows (Wright, 2020). Beginning the process with cash in-hand, planning workflow and technology needs early on, and including all court partners in the process likely helped overcome concerns about funding as well as mitigate other practical administrative obstacles. Furthermore, when it was found that El Dorado county's case management system would not interface properly with the MyCitations system, El Dorado withdrew and the project continued in other partner counties. For the Ventura day-fine pilot project, the Ventura court was the only participating court and a failure there meant a failure for the entire project. In my view, successful engagement with project stakeholders means not only being proactive about potential roadblocks and opposition, but also effectively managing risk such that a single point of failure will not derail an entire project.

The themes of technology improvements, judges' attitudes, administrative challenges, and stakeholder engagement are interconnected and integral parts of implementing fine and fee reforms in California courts. Based on my interviews of experts and review of relevant documents pertaining to similar programs, the principals in the MyCitations online fine and fee

adjudication project have done a better job of managing these themes and overcoming obstacles to success, in contrast with the failed Ventura day-fine pilot project. In the next section, I will summarize my key findings and provide recommendations for future attempts at implementing a day-fine system. This will involve synthesizing my analysis with previous proposals advanced by Mahoney and in consideration of current events surrounding fine and fee reforms. Finally, I will describe my hope for continued reform efforts in this area.

## **Chapter 5: Conclusion and Recommendations**

### **Summary of Thesis**

Legal financial obligations (LFOs) include the tariff-fines and court fees leveled upon a defendant upon conviction or admission of guilt in a court of law. In recent years, LFOs have become increasingly burdensome, particularly for indigent defendants. A \$100 traffic fine in years past has now ballooned to \$500 due to the added court fees, a figure which can then jump to \$800 if the initial deadline to pay is missed (Bender et al., 2015). Conversely, for wealthy defendants, these fines and fees constitute only a small proportion of their total income and therefore lack the necessary and intended punitive sting. For the well-to-do, a \$500 fine might be viewed as a mild nuisance, but for lower income individuals it might constitute a devastating financial blow (Liu, Nunn, & Shambaugh, 2019).

Gleicher & DeLong, 2018 noted that this type of debt is not dischargeable and continues to accrue interest while unpaid. A failure to pay can result in jail time, revocation of a driver's license, job losses, and many other downstream financial consequences that go beyond the original punitive intent of these fines and fees. Jail time is acutely harmful for the defendant but also costly for society at-large. Harris (2020) described that while judges and clerks possess some discretion in some jurisdictions regarding how LFOs are imposed, there is little oversight and accountability. In a Washington State study where some judges did try to help defendants avoid jail, some judges urged defendants to seek out illicit means to pay the fines, which undermines the very foundations of justice (Harris, 2016). The prevailing tariff-fine system is clearly harmful to people of limited means in California and barely noticeable to those with high incomes. A fine system that considers proportionality is needed to address these issues.

Day fines, which are based on both the severity of the crime and the offender's income, stand as an alternative to tariff-fines. In the 1980s and 1990s, some jurisdictions in the United

States began experimenting with day-fine pilot programs, with some mixed success. McDonald et al. (1992), described results from an experimental day-fine program in Milwaukee, WI that showed increased collection rates and reduced administrative costs. The Vera Institute of Justice (1995) also found similar improvements in compliance with a day-fine pilot program in Polk County, IA with rates of full payment jumping from 32 percent to 72 percent and at least partial payment rising from 45 percent to 85 percent.

A day-fine pilot program was attempted in the Ventura Municipal Court in Ventura County, California in 1994, but the effort failed largely due to organizational management problems. Based on the Mahoney (1995) report, I addressed these problems thematically through the following categories: technology improvements, judge's attitudes, administrative challenges, and stakeholder engagement. I delved into the details of the failures of the Ventura project and explored what current challenges may be lurking for similar programs through semi-structured interviews with a court expert, a Judicial Council fellow working on a current fine and fee ability-to-pay project and a planning committee member from the Ventura day-fine planning project. One respondent, also a consultant on the Ventura planning committee, was unable to meet and instead submitted responses to a questionnaire.

The responses revealed a fascinating interconnectedness between themes: technology improvements depended upon planning and budgeting of administrators; judge's attitudes were expressed by seeking to fulfill a greater institutional purpose, which set the tone for their opposition and complicated stakeholder engagement; administrative challenges involved juggling workload concerns, managing new technology, and corralling the staff under their purview. Managing these themes required understanding that none existed in a vacuum.

The judicial and court experts I interviewed echoed the consensus that these problems would still exist if a day-fine pilot program were implemented today. Recently, a pilot program



for an online traffic fee adjudication and ability-to-pay called MyCitations was implemented in three California counties with plans to expand to several more. This program bears some similarities to a day-fine system in that it seeks to reduce the fine and fee burden on indigent defendants by allowing them to reduce their court fines based on an online needs assessment. MyCitations also allows for some routine court functions to be handled online, saving the time and expense of a court hearing. So far, the MyCitations program has been successful and the planners have managed technology and stakeholder engagement with multiple counties such that a single point of failure will not jeopardize the whole program. This contrasts with the Ventura day-fine pilot project, which was implemented in only one location and floundered when one of the judges who would have taken on a significant caseload during the pilot brought up strong objections but was not included on the planning committee.

### **A Window of Opportunity**

In 2020, tens of thousands of Americans took to the streets to protest police violence and to encourage law enforcement reform. Kingdon (2011) describes such circumstances as focusing events, where widespread national attention encourages policymakers to seek solutions from the policy stream. In my view, it appears that the window of opportunity is open for further law enforcement and court reform efforts. Lawmakers appear dedicated to continuing funding for such projects, including the MyCitations project, even during an economic crisis and looming austerity measures.

On May 14, 2020, California Governor Gavin Newsom held a corona virus update press conference announcing potential budget cuts to address the economic slowdown caused by the COVID-19 pandemic. During the conference, Keely Bosler, Director of the California Department of Finance, provided details on the numerous programs that would face the chopping block if federal funding was not received (PBS NewsHour, 2020). Director Bosler specifically

mentioned the ability to pay traffic fee adjudication pilot program but noted that its funding would be maintained (PBS NewsHour, 2020). I believe it speaks to the commitment of policymakers to equity-focused reforms that such a program—that could potentially reduce revenue received by the courts—is allowed to continue during a budget crisis. This may indicate an open policy window for similar programs statewide.

### **Moving Forward**

If an interested county or court in California were to decide to implement a day-fine system today, they would do well to follow the example of the MyCitations pilot program. The key stakeholders of that pilot program have so far successfully navigated the challenges of implementing a complex and potentially controversial judicial reform project. Although it would be difficult to improve upon the recommendations provided by Mahoney in his 1995 report, I provide below some additional recommendations for implementing a day-fine system along the lines of the themes described in this thesis.

### **Technology Improvements**

1. Ensure software vendors have experience with and understand case management systems so that any new software can properly interface with existing systems.
2. Provide long-term funding on information technology contracts for maintenance and troubleshooting.
3. Ensure enough time for all court staff, including judges, to be thoroughly trained with the software system before implementation.

### **Judges' Attitudes**

1. Engage with all judges in the participating courts early in the process.
2. Address any concerns held by judges in the participating courts, whether legal or operational, as early as possible.

3. Leverage the natural rapport between administrators and judges to resolve conflicts and achieve consensus even if full agreement is not possible.

### **Administrative Challenges**

1. Advertise the value of the pilot program to stakeholders and the public as early as possible.
2. Prepare a successful program to be scaled up to expand to more counties, or even statewide.
3. Upon implementation, prepare and record extensive analytics on key data such as revenues, changes in sentencing patterns, and feedback from court participants.
4. Have clear expectations about expected staff workload during implementation.

### Table 4: Stakeholder Engagement

1. Include a broad coalition of stakeholders in the planning and implementation phases; this should especially involve stakeholders who hold reservations about the program.
2. Provide clear expectations on what the pilot program will do and will not do.

### **Final Thoughts**

While it would not be an easy task to implement a day-fine system in today's California courts, it is not impossible. Prior successful day-fine pilot programs and the currently implemented MyCitations online traffic adjudication and ability-to-pay program attest to this possibility. Even the failed Ventura pilot program showed that the essential framework is workable and that the court staff and administrators were willing to try despite internal opposition. In my view, implementing a day-fine system would be a worthwhile endeavor because the current tariff-fine system causes such obvious and direct harm. More and more Californians face jail time, lost jobs, and severe disruptions to their lives due to unpaid court fines and fees. The cycle of poverty and indebtedness persist because these fines and fees are not

proportional to the income of the offender, who cannot pay them if they are put in jail. A poor individual might be financially ruined by a \$200 speeding ticket, while a wealthier person can simply pay the ticket as if it were a minor inconvenience, and for each the punitive impact of the fine differs so greatly that it is rendered either abjectly cruel on the one hand or utterly meaningless on the other. The tariff-fine system further undermines the very cause of justice if defendants are forced to use illicit means to pay these fines or depend on friends and family to pay them in their place. To resolve these injustices, I believe we must focus court fine and fee reform efforts along the lines of equity and proportionality so that we may have a system of justice that both binds and protects all who stand before it, without prejudice or favor.

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