

GAO

Report to the Chairman, Senate
Committee on the Judiciary, and the
Chairman, Subcommittee on Crime,
House Committee on the Judiciary

May 1999

FEDERAL COURTS

Differences Exist In Ordering Fines and Restitution



B-279743

May 6, 1999

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate

The Honorable Bill McCollum
Chairman, Subcommittee on Crime
Committee on the Judiciary
House of Representatives

As you requested, this report discusses federal offenders who were ordered to pay criminal fines and victim restitution. The objectives of this report are to (1) identify the percentage of offenders who were ordered to pay fines or restitution in fiscal year 1997 and those who were not, (2) identify differences across judicial circuits and districts in the percent of offenders who were ordered to pay fines or restitution and those who were not, and (3) provide officials' opinions about possible reasons for those differences. Based on discussions with your staff, we also documented changes in the rate at which offenders were ordered to pay restitution before and after the Mandatory Victims Restitution Act (MVRA) (title II of P.L. 104-132) was enacted April 24, 1996. This is the second of two reports concerning victim restitution and criminal fines based on your request. Our first report¹ concerned how offenders are required to make payments on fines and restitution that have already been ordered, including the guidelines available for determining payment schedules and how payment schedules were established.

Individuals convicted of a federal crime can be ordered by the court to pay a fine or restitution at sentencing. Criminal fines, which are punitive, are to be paid in most cases to the Department of Justice's (DOJ) Crime Victims Fund. United States Sentencing Commission (USSC) Guidelines provide guidance on the minimum and maximum fine amounts to be imposed by the courts based on the offense. In establishing the USSC, Congress sought, as one objective, uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. Fines may be waived if the offender establishes that he or she is unable to pay and is not likely to become able to pay a fine. MVRA reformed restitution law and now requires the court to order full restitution in certain cases to each victim in the full amount of each

¹ Fines and Restitution: Improvement Needed in How Offenders' Payment Schedules Are Determined (GAO/GGD-98-89; June 29, 1998).

victim's losses, without regard to the offender's economic situation. Previously, as with fines, the court could waive restitution, in most cases, based on the offender's inability to pay.

Results in Brief

While many factors influenced whether an offender was ordered to pay a fine or restitution, the judicial circuit or district where the offender was sentenced was a major factor during fiscal year 1997. The large statistical variation among judicial circuits and districts raises a question, on a broad level, about whether the objective of uniformity in the imposition of fines and restitution is being met.

Most of the approximately 48,000 federal offenders sentenced under USSC Guidelines in fiscal year 1997 were not ordered by the courts to pay a fine or restitution. About 19 percent were fined by the courts and about 20 percent were ordered to pay restitution. The percentage of offenders who were ordered to pay fines or restitution varied greatly across the 12 federal judicial circuits and 94 federal judicial districts. Across districts, for example, the percentage of offenders who were ordered to pay fines ranged from 1 percent to 84 percent, and the percentage of the offenders who were ordered to pay restitution ranged from 3 percent to 49 percent. The likelihood of an offender being ordered to pay fines or restitution could have been three times or more greater in one federal judicial district than in an adjacent district.

An important factor in determining whether an offender was ordered to pay a fine or restitution was the type of offense committed. While 6 percent of offenders sentenced for immigration offenses were ordered to pay a fine, almost one-third of property offenders were ordered to pay. Similarly, while 1 percent of drug offenders were ordered to pay restitution, almost two-thirds of fraud offenders were ordered to pay.

Besides the type of offense committed, other factors, based on our statistical analyses, that were associated with whether an offender was ordered to pay included factors such as sex, race, education, citizenship, length of sentence, and type of sentence imposed, such as prison, probation, or an alternative. However, even after controlling for all of these factors for four specific types of offenses in our multivariate statistical analyses, the judicial circuit or district in which the offender was sentenced continued to be a major factor in determining whether an offender was ordered to pay a fine or restitution.

Some court officials and prosecutors provided explanations of why differences existed among the districts. Some attributed the differences to

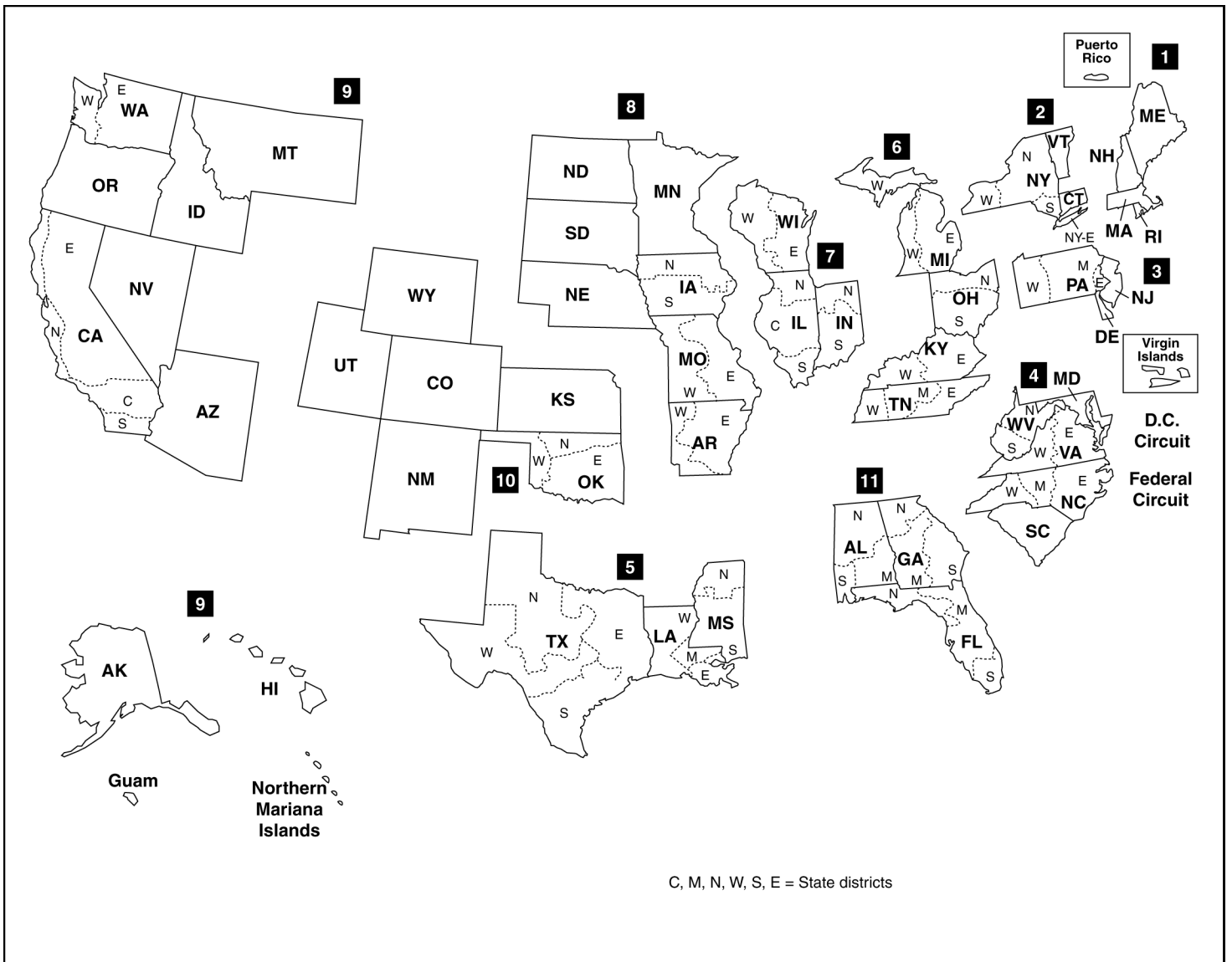
the nature and type of offenses committed or types of offenders sentenced in the districts. Some officials believed that the culture in the judicial district among the prosecutors and court officials contributed to whether offenders were fined or ordered to pay restitution. The culture included how prosecutors and court officials worked together to identify victims and their losses, among other factors.

Since the imposition of restitution for certain offenses became mandatory with the passage of MVRA, the percentage of offenders, overall, who were ordered to pay restitution during fiscal year 1997 actually declined from 26 percent of offenders sentenced for crimes committed before April 24, 1996, to 12 percent of offenders sentenced for crimes committed on or after April 24, 1996, when MVRA became effective. The differences in the likelihood of offenders being ordered to pay restitution for crimes committed before and after MVRA became effective varied for specific types of offenses; for example, the percentage of offenders ordered to pay restitution increased for robbery offenses but decreased for larceny and fraud offenses. Some court officials and prosecutors believed that it was still too early to see the full impact of MVRA. These officials commented that time is needed to become familiar with and implement the act. They said that there may also be mitigating circumstances, such as the recovery of stolen money in a robbery, to explain why restitution was not ordered in a particular case.

Background

Congress divided the country into 94 federal judicial districts, and in each district there is a federal district court. The U.S. district courts are the federal trial courts—the places where cases are tried, witnesses testify, and juries serve. Congress placed each of the 94 districts in one of 12 regional circuits, and each circuit has a court of appeals. If a trial is lost in district court, the case can be appealed, and the court of appeals can review the case to see if the district judge applied the law correctly. Figure 1 depicts a map of the United States that shows the geographical boundaries of the 94 district courts and the 12 regional circuit courts (including 11 numbered circuits and the District of Columbia Circuit.) There is also a Federal Circuit whose court of appeals is based in Washington, D.C., but hears certain types of cases from all over the country. The Court of Claims is the trial court from which the appeal arises for the Federal Circuit.

Figure1: Geographical Boundaries of Twelve Regional Circuit Courts Including the District of Columbia and Ninety Four State District Courts



Source: Administrative Office of the U.S. Courts data.

Under the law, offenders in federal court may be ordered to pay a fine or restitution at sentencing. The court is to impose a fine in all cases, except where the defendant establishes that he or she is unable to pay and is not

likely to become able to pay any fine, according to guidelines issued by the USSC,² which interpret federal law.

In establishing the USSC, Congress sought, as one objective, uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. USSC's Guidelines state that the amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive. Except where the fine is established by specific statute, the fine should be within a range established by the USSC. The range is based on the offense level. The base offense level, which is a numerical score, is established in the Guidelines for each type of crime. Adjustments can be made to the base offense level for such things as offense characteristics, offender's role, the victim, obstruction of justice, and acceptance of responsibility. For example, the Guideline range for fines for offense level 8 is \$1,000 to \$10,000; for offense level 38 the guideline range for fines is from \$25,000 to \$250,000. There is also a criminal history category that helps the judge determine whether an offender should be sentenced higher or lower within the Guideline range. According to the USSC Guidelines, in determining the amount of the fine, the court should consider, among other factors, the need for the combined sentence to (1) reflect the seriousness of the offense (including the harm or loss to the victim and the gain to the defendant), (2) promote respect for the law, (3) provide just punishment, and (4) afford adequate deterrence.

According to the USSC Guidelines, the court should also consider any evidence presented on the offender's ability to pay a fine in light of the offender's earning capacity and financial resources, as well as the burden that the fine places on the offender and his or her dependants, any restitution or civil obligations the offender is required to make, other consequences of conviction such as civil obligations, whether the offender has been previously fined for a similar offense, and any other pertinent equitable considerations. The court may waive the fine or impose a lesser fine if it has been established that the offender is not able and is not likely to become able to pay all or part of the fine, even with the use of a reasonable installment schedule. The court may also waive the fine or impose a lesser fine if the imposition of a fine would unduly burden the defendant's dependents.

² USSC was created by Congress in the Sentencing Reform Act of 1984, P.L. 98-473. The act required USSC to develop a system of sentencing guidelines.

Since passage of the Victims of Crime Act of 1984 (P.L. 98-473), most fines have been used to support DOJ's Crime Victims Fund. The fund provides, among other things, grants for victim assistance programs and compensation to victims.

Restitution is to be paid to the victim of the crime and should reflect actual losses suffered as a result of the crime. However, mandatory restitution as part of a federal criminal sentence is a relatively recent idea. Initially, the courts did not recognize restitution as a separate term of a criminal sentence. This changed with the Victim and Witness Protection Act of 1982 (P.L. 97-291), which was the first statute that broadly addressed victim restitution in general. Before enactment, imposition of an order of restitution was completely within the discretion of the court and could only be ordered as a condition of probation. Later, in 1992, with the enactment of the Child Support Recovery Act (P.L. 102-521), Congress introduced the idea of "mandatory" restitution into federal law. The act mandated that courts impose restitution on defendants convicted of willful failure to pay past due child support. In the Violence Against Women Act of 1994 (title IV of P.L. 103-322), Congress identified certain other types of crimes subject to mandatory restitution, such as sexual abuse, sexual exploitation and other abuse of children, domestic violence, and telemarketing.

On April 24, 1996, MVRA was enacted as title II of the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132), reforming restitution and altering the way it is to be enforced. MVRA now requires the court to order restitution for each offender who has been convicted or has pled guilty to the following charges, without regard to the offender's economic situation:

- a crime of violence (as defined in 18 U.S.C. 16);
- an offense against property under title 18 of the U.S. Code, including any offense committed by fraud or deceit; or
- an offense relating to tampering with consumer products (18 U.S.C. 1365).

According to MVRA, there must be an identifiable victim or victims who have suffered a physical injury or monetary loss. The only other exception to mandatory restitution is for an offense against property if the court finds that

- the number of identifiable victims is so large that it makes paying restitution impractical or

- determining complex issues of fact related to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

Prior to MVRA, the law provided that the court could consider, in determining whether to impose an order of restitution, the financial resources of the offender, the financial needs of the offender and his or her dependents, and other factors the court deemed appropriate. Under MVRA, the court cannot waive restitution based on the offender's economic circumstances. However, the court can order the offender to make nominal periodic payments if the offender's economic circumstances do not allow for (1) the payment of any amount of a restitution order or (2) the payment of the full amount in the foreseeable future, under any reasonable schedule of payments.

According to the legislative history, an intent of MVRA was to establish one set of procedures for the issuance of restitution orders in federal criminal cases. The history cited fiscal year 1994 USSC statistics that showed that about 20 percent of federal criminal cases had restitution orders. The history also cited rates for specific types of crimes, such as about 55 percent of offenders sentenced for robbery were ordered to pay restitution. The history cited these figures as indications that more progress in ordering restitution remained to be made.

Objectives, Scope, and Methodology

The objectives of this report are to (1) identify the percentage of offenders who were ordered to pay fines or restitution in fiscal year 1997 and those who were not, (2) identify differences across judicial circuits and districts in the percent of offenders who were ordered to pay fines or restitution and those who were not, and (3) provide officials' opinions about possible reasons for those differences. We also documented changes in the rate at which offenders were ordered to pay restitution before and after MVRA was enacted April 24, 1996.

To identify the number of offenders who were ordered to pay fines or restitution and those who were not, we used USSC data for fiscal year 1997. USSC maintains a computerized data collection system, which forms the basis for its clearinghouse of federal sentencing information. USSC requests that each probation office in each judicial district submit the following documents on every defendant sentenced under the guidelines:

- indictments,
- presentence report,

-
- report on the sentencing hearing,
 - written plea agreement, and
 - judgment of conviction.

Data from these documents are extracted and coded for input into USSC's databases. We did not independently verify the accuracy of the USSC data. However, USSC takes several steps to insure the reliability and completeness of the data system.

To identify the differences across the judicial circuits and districts in the percentage of offenders who are ordered to pay fines or restitution and those who are not, we used USSC's data for fiscal year 1997 to identify the percentage of offenders who received a fine or restitution by court district. Because we found that type of offense was strongly related to whether fines or restitution was ordered, we also analyzed the differences among judicial circuits and districts in fines and restitution ordered by selected types of offenses. To determine the percentage of offenders ordered to pay fines, we selected larceny, fraud, and drug trafficking crimes because of the large number of offenders sentenced under USSC guidelines in federal courts for these crimes. To determine the percentage of offenders ordered to pay restitution, we selected robbery, larceny, and fraud crimes because (1) there were a large number of offenders sentenced in federal courts and (2) these crimes involve an act upon another person, so we believed there was the reasonable expectation of an identifiable victim.

To identify possible reasons for sentencing differences among judicial circuits and districts, we analyzed the overall percent of fines and restitution ordered by circuits and districts and for the specific types of crimes we chose. In performing our analysis, we first considered all federal offenders and how the likelihood of being ordered to pay fines or restitution was affected by

- selected demographic characteristics of the offenders (sex, race, citizenship, education, and number of dependents);
- the type of offense they committed (whether it involved property, drugs, firearms, fraud, immigration, a violent or other offense);
- characteristics of the offender's sentence (whether it occurred before or after MVRA was enacted, whether the offender was sentenced to prison, probation, or an alternative sentence imposed, and whether there was more than a single count of conviction); and
- the circuit and district in which the sentencing occurred.

We found that a number of factors were strongly associated with whether fines or restitution were ordered and that the type of offense was one of the most important. Therefore, we conducted a series of multivariate statistical analyses for specific types of offenses to estimate the effects of the other factors on fine and restitution orders, independent of one another. We used logistic regression techniques to estimate, simultaneously, the effects of these different factors on the odds of an offender being ordered to pay restitution among larceny, robbery, and fraud offenses and then to estimate the effects of these factors on the odds of an offender being ordered to pay fines among larceny, drug trafficking, and fraud offenses.³ In one series of regression models, we employed circuit as one of our independent variables to determine how much variation across circuits in the odds on ordering fines and restitution persisted for these types of offenders after other factors were controlled. In a second series of regressions, we restricted our attention to offenders in the 10 largest districts, based on the number of offenders sentenced during fiscal year 1997 for each of the 4 types of offenses selected, to get a sense of the extent of variation across districts. (It was not always the same 10 districts for each type of crime.) There were not sufficient numbers of offenders ordered to pay fines for robbery offenses or restitution for drug trafficking offenses in the districts for us, in our opinion, to reliably perform the multivariate statistical analyses in those cases. We also believed it would be too time consuming to perform the multivariate statistical analyses for offenders sentenced for all types of federal offenses separately in all 94 districts.

We interviewed officials from the DOJ's Executive Office of the U.S. Attorneys, the Administrative Offices of the U.S. Courts (AOUSC), USSC, and selected Federal District Courts to obtain their opinions of why the differences existed in the percentage of offenders ordered to pay fines and

³ The statistical terms probability, odds, and odds ratio are used in this report. Probability, expressed as a proportion or percentage, is the ratio of the number of outcomes that will produce a specific event to the total number of possible outcomes. For example, the probability of an offender being ordered to pay a fine was 0.19 (19 out of every 100 offenders, or 19 percent, were so ordered.) However, probability is limited by the bounds of 0 and 100. For comparison purposes, odds are better than probability because they are not restricted by these boundaries. Odds is the ratio of the probability of an event occurring to the probability of it not occurring. For example, the odds of an offender being ordered to pay a fine was 0.23 (19 of 100 ordered to pay divided by the 81 of 100 who were not). More simply, odds of 0.23 means that 23 were ordered to pay a fine for every 100 who were not.

We compare odds by taking odds ratios. For example, the odds ratio is determined by dividing the odds of an offender being ordered to pay restitution in a circuit by the odds of an offender being ordered to pay restitution in the referent circuit. The referent circuit is the circuit in which an offender has the lowest odds of being ordered to pay restitution before controlling for other factors that might affect whether restitution is ordered. Odds ratios are, perhaps, most easily understood in terms of "times as likely." For instance, an odds ratio of 4.5 would be interpreted as "4.5 times as likely as in the referent circuit."

restitution and their views about the effect of mandatory victim restitution. We limited our discussions to district courts in the largest judicial districts, based on number of offenders sentenced for each of the four types of offenses. We selected these districts first because they were among the districts that met the criteria for our multivariate statistical analyses. We then narrowed our selection to seven districts in two parts of the country where at least one district was adjacent to another and there appeared to be variation in the percent of offenders ordered to pay fines or restitution. Those seven districts were the Eastern District of Pennsylvania, the District of New Jersey, the Southern District of New York, the Eastern District of New York, the Northern District of California, the Central District of California, and the Southern District of California. At each district, we interviewed the Chief Judge, the U.S. Attorney, and the Chief Probation Officer or a representative selected by that official. However, we did not review court case files at each district. A review of court case files would have been time consuming and might not have provided the reason why a fine or restitution was or was not ordered in a particular case.

We did our work from August 1998 through January 1999 in accordance with generally accepted government auditing standards. We requested comments from DOJ, USSC, and AOUSC. We obtained written comments from DOJ and USSC. AOUSC provided technical comments. These comments are summarized at the end of this letter and are contained in appendixes III and IV. All three agencies provided technical corrections and suggestions.

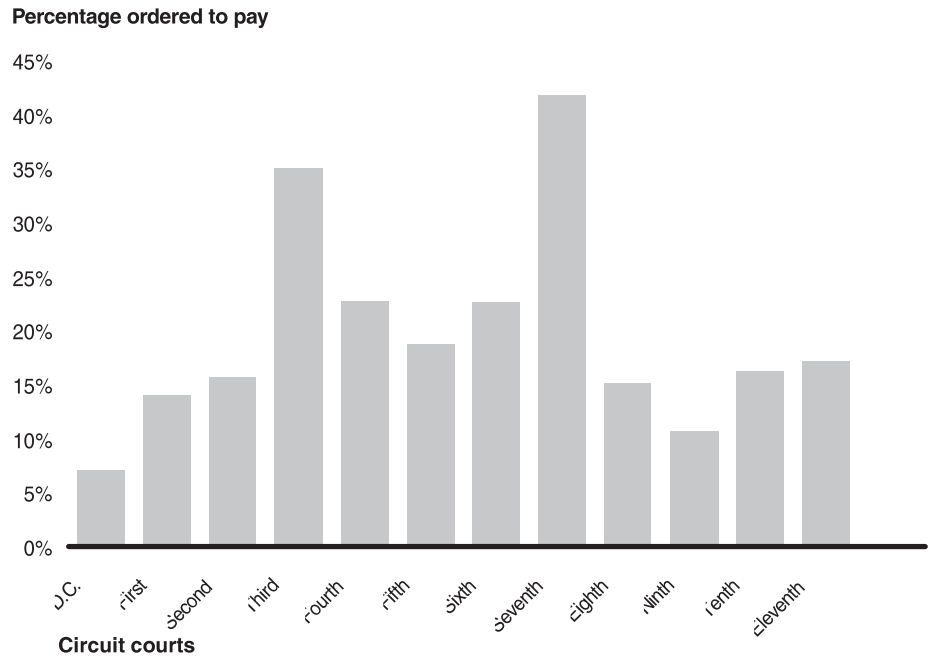
Numbers and Percent of Federal Offenders Ordered to Pay Fines or Restitution

According to our analysis of USSC data, of the approximately 48,000 federal offenders sentenced in fiscal year 1997 under USSC guidelines, about 9,000 (19 percent) were ordered to pay fines and 9,600 (20 percent) were ordered to pay restitution. About 2 percent were ordered to pay both fines and restitution. The total amount of fines and restitution ordered was over \$1.6 billion dollars.

Percent of Federal Offenders Ordered to Pay Fines or Restitution by Judicial Circuit or District

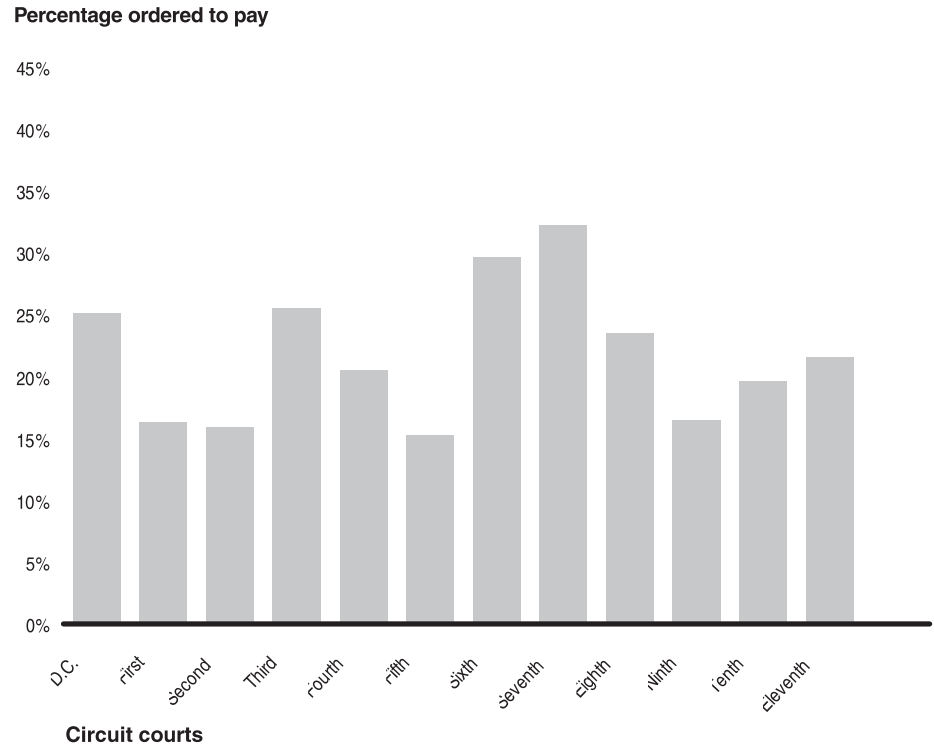
The percent of federal offenders sentenced that were ordered to pay fines and restitution varied substantially across the 12 federal circuits. Figure 2 shows the percent of offenders ordered to pay fines ranged from 7 percent in the D.C. Circuit to 42 percent in the Seventh Circuit, which includes Illinois, Indiana, and Wisconsin. Figure 3 shows the percent of offenders who were ordered to pay restitution ranged from 15 percent in the Fifth Circuit, which includes Texas, Louisiana, and Mississippi, to 32 percent in the Seventh Circuit. Table I.2 in appendix I shows the percent of offenders ordered to pay fines or restitution, by judicial circuit.

Figure2: Percent of Offenders Ordered to Pay Fines, by Circuit



Source: GAO analysis of fiscal year 1997 USSC data.

Figure3: Percent of Offenders Ordered to Pay Restitution, by Circuit



Source: GAO analysis of fiscal year 1997 USSC data.

The 94 federal judicial districts also differed greatly in the percent of offenders ordered to pay fines, ranging from a low of 1 percent of the offenders sentenced in the Eastern District of Oklahoma to a high of 84 percent in the Southern District of Illinois. The rate at which offenders were ordered to pay restitution also varied from 3 percent in the Southern District of California to 49 percent in the Western District of Wisconsin. The rate at which offenders were ordered to pay fines or restitution might be three times or more greater in one district than in an adjacent district. According to court officials, there should be less variation in the types of offenses committed among adjacent districts than there might be among districts located in different parts of the country. For example, while 45 percent of the offenders in the district of New Jersey were ordered to pay fines, 12 percent of the offenders in the Eastern District of New York, which includes Staten Island and Long Island, were ordered to pay. Similarly, while 22 percent of the offenders in the District of New Jersey were ordered to pay restitution, 9 percent of the offenders in the Eastern District of New York were ordered to pay. Table I.3 in appendix 1 shows

the variation by district in offenders ordered to pay fines or restitution for all 94 judicial districts.

Differences Among the Judicial Circuits and Districts in Ordering Fines or Restitution

While many factors influence whether an offender was ordered to pay a fine or restitution, the judicial circuit or district where the offender was sentenced was a major factor. Our initial statistical analysis of all 12 judicial circuits and 94 districts showed major variation among the judicial circuits and districts in the likelihood of an offender being ordered to pay a fine or restitution. However, there was also a strong association between the type of offense committed and the likelihood of an offender being ordered to pay a fine or restitution. We then performed a multivariate statistical analysis for offenders sentenced for four types of offenses—robbery, larceny, fraud, and drug trafficking—and controlled for such things, among others, as offender characteristics, type of crime committed, length of sentence, and type of sentence imposed such as prison, probation, or an alternative. We selected these four types of offenses because they were well-represented in the number of offenders sentenced in the districts. We performed our multivariate statistical analysis for the 10 largest districts in number of offenders sentenced under the Guidelines for each of the 4 types of offenses during fiscal year 1997.

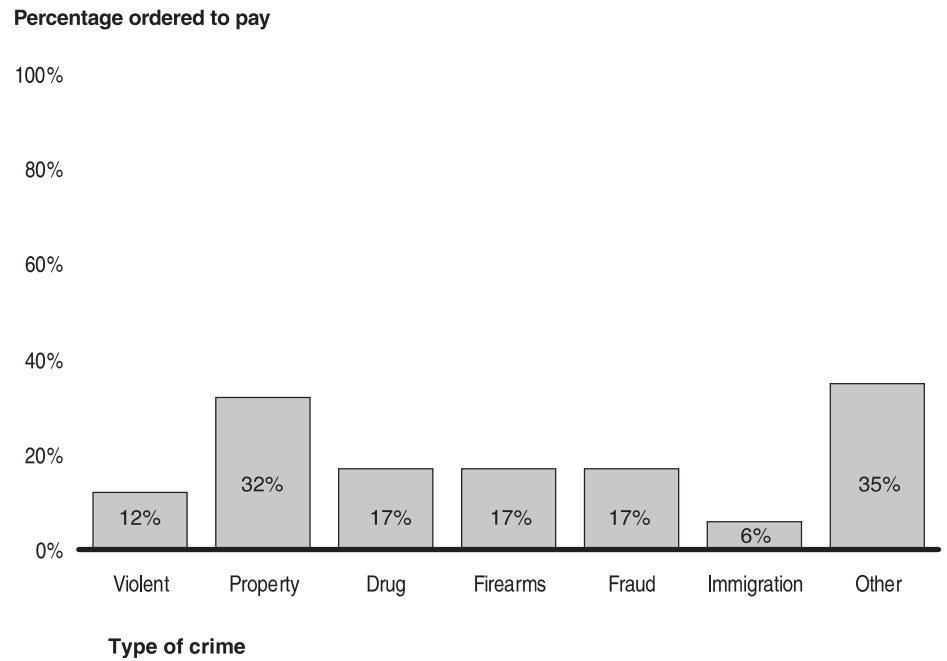
Our multivariate statistical analyses for the four types of offenses showed that the major variation among judicial circuits and districts, although less, persisted and the likelihood of an offender being ordered to pay fines or restitution for the same type of offense could still be many times greater in one judicial circuit or district than in another. We asked court officials and prosecutors in seven districts for possible explanations of why these differences might exist. We received some reasons related both to the nature of the crimes and the types of offenders sentenced in particular districts and to the culture of the courts and the prosecutor's office in the districts such as how well court officials and prosecutors work together to identify victims and their losses.

Initially, we identified a number of potential reasons for the differences between the judicial circuits and districts in the likelihood of offenders being ordered to pay fines or restitution. Judicial circuits and districts varied substantially in the types of offenders who were sentenced. For example, the percentages of offenders sentenced for drug trafficking, robbery, and fraud varied by judicial circuit and district. Judicial circuits and districts also varied according to the demographic characteristics of offenders who were sentenced, such as the number of women, minorities, or noncitizens. There were also differences in the characteristics of offenders' sentences, such as whether they were sentenced to prison or

probation and the length of the sentence or amount of time the offender would be in custody.

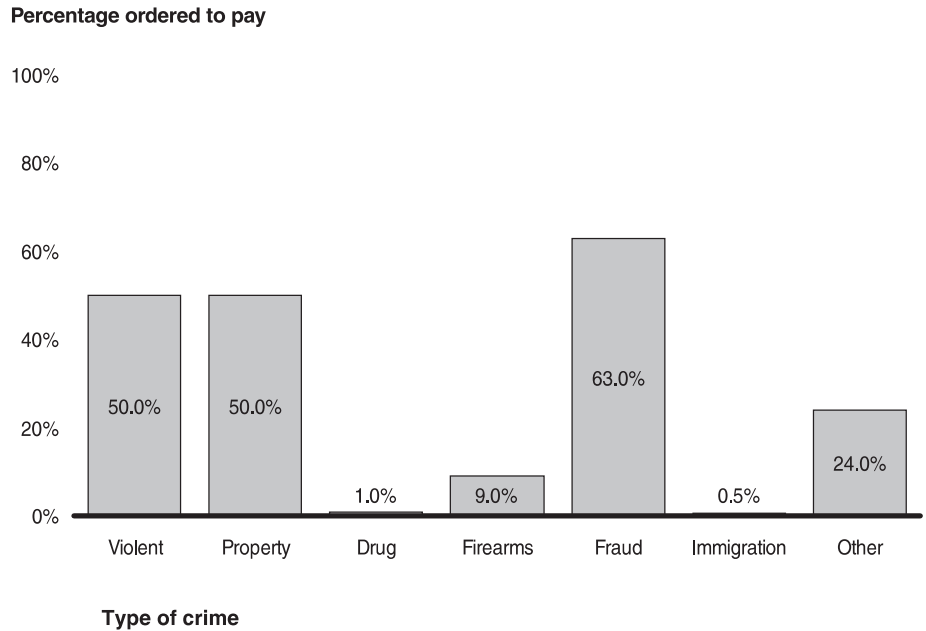
Our preliminary analysis showed that many of these characteristics affected whether offenders were ordered to pay fines or restitution. For example, the type of offense had a very pronounced effect. While 6 percent of immigration offenders were ordered to pay a fine, almost one-third of property offenders were likewise ordered. Similarly, while 1 percent of drug trafficking offenders were ordered to pay restitution, almost two-thirds of fraud offenders were so ordered. Similar disparities in the likelihood of an offender being ordered to pay fines or restitution existed among those sentenced for such offenses as drug trafficking, fraud, and violence. Figures 4 and 5 show the percentage of offenders who were ordered to pay fines or restitution, by type of offense.

Figure 4: Percentages of Offenders Ordered to Pay Fines in Fiscal Year 1997, by Type of Crime



Source: GAO analysis of fiscal year 1997 USSC data.

Figure 5: Percentages of Offenders Ordered to Pay Restitution in Fiscal Year 1997, by Type of Crime



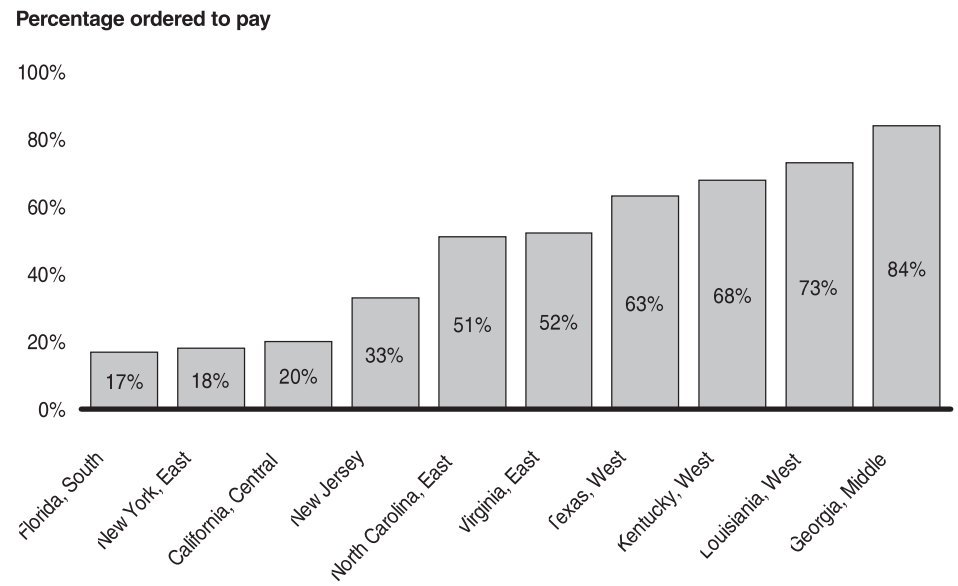
Source: GAO analysis of fiscal year 1997 USSC data.

Other factors related to the offender and the type of sentence also produced variations in the likelihood of an offender being ordered to pay a fine or restitution in our initial statistical analysis for all 12 judicial circuits and 94 judicial districts. For example, overall, females were more likely than males to be ordered to pay restitution and blacks less likely than whites. Also, overall, citizens were six times more likely to have restitution orders than noncitizens. Similar race differences existed in the likelihood of offenders being ordered to pay fines. Additionally, offenders who were sentenced to probation were much more likely to be ordered to pay a fine or restitution than those sent to prison. Better-educated offenders also were more likely to be ordered to pay a fine or restitution. Our comparison for these factors is presented in detail in table I.1 of appendix 1.

Given the effect of these characteristics, we did multivariate statistical analyses that reestimated the differences in fines and restitution across circuits and districts. In these analyses, we controlled for those characteristics. These analyses took into account differences in offenders' characteristics across these judicial locations and the effects of these characteristics on fine and restitution orders. We looked separately at fine orders among larceny, drug, and fraud offenders and separately at restitution orders for larceny, robbery, and fraud offenders. The statistical

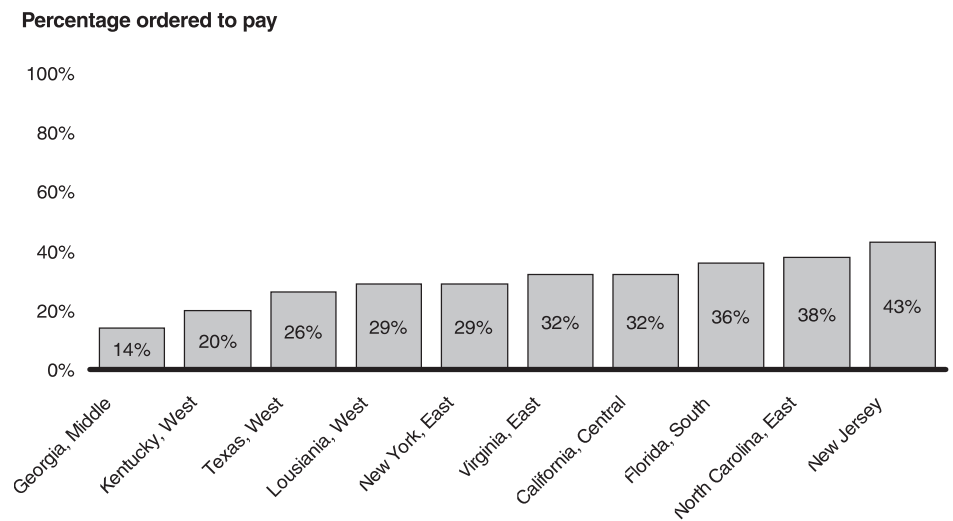
analyses are presented in full in appendix I. Figures 6 through 11 show the differences among the 10 largest districts in number of offenders sentenced during fiscal year 1997 for fraud, larceny, robbery, and drug trafficking.

Figure6: Percentage of Offenders Sentenced to Pay Fines for Larceny Offenses in Selected Districts



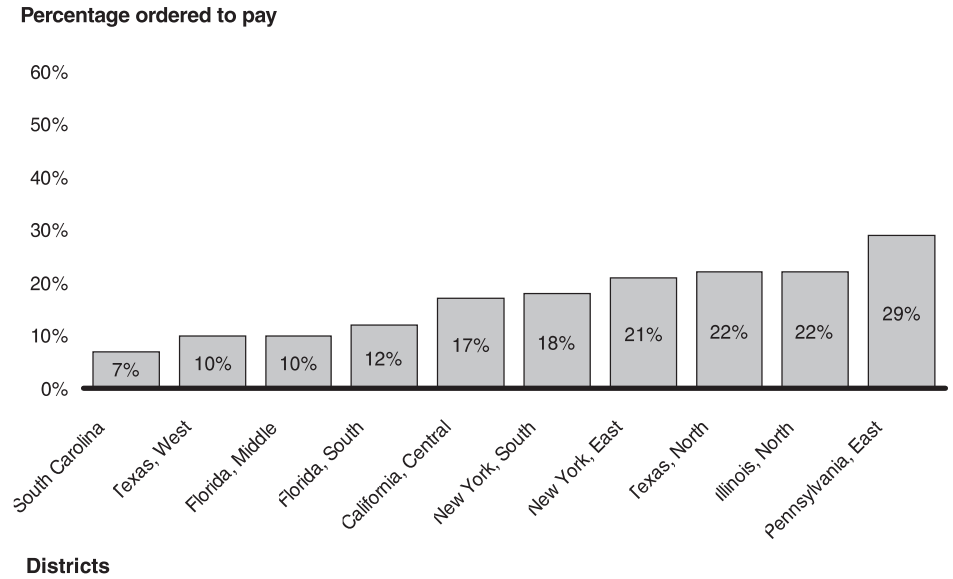
Districts
Source: GAO analysis of fiscal year 1997 USSC data.

Figure7: Percentage of Offenders Sentenced to Pay Restitution for Larceny Offenses in Selected Districts



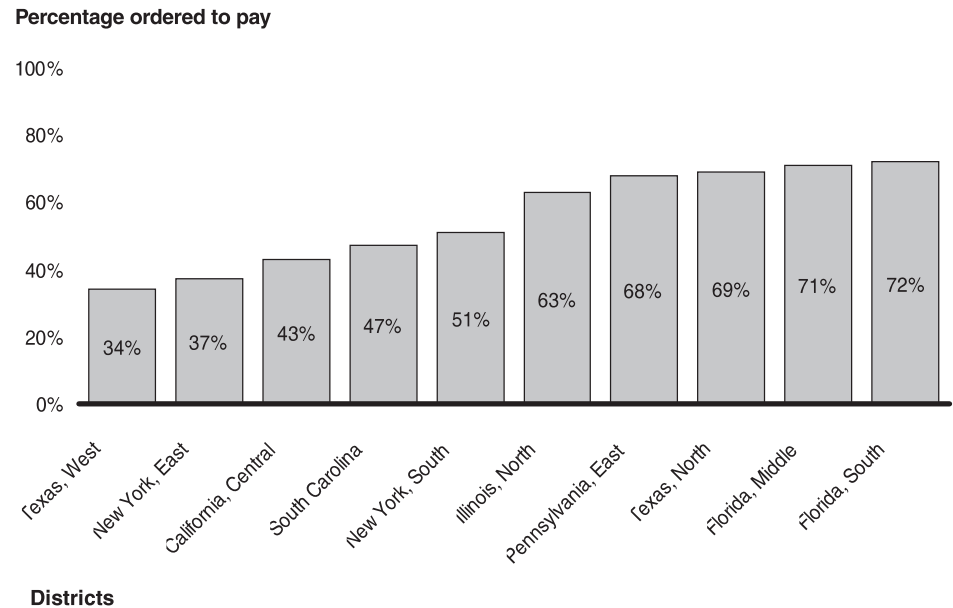
Districts
Source: GAO analysis of fiscal year 1997 USSC data.

Figure8: Percentage of Offenders Sentenced to Pay Fines for Fraud Offenses in Selected Districts



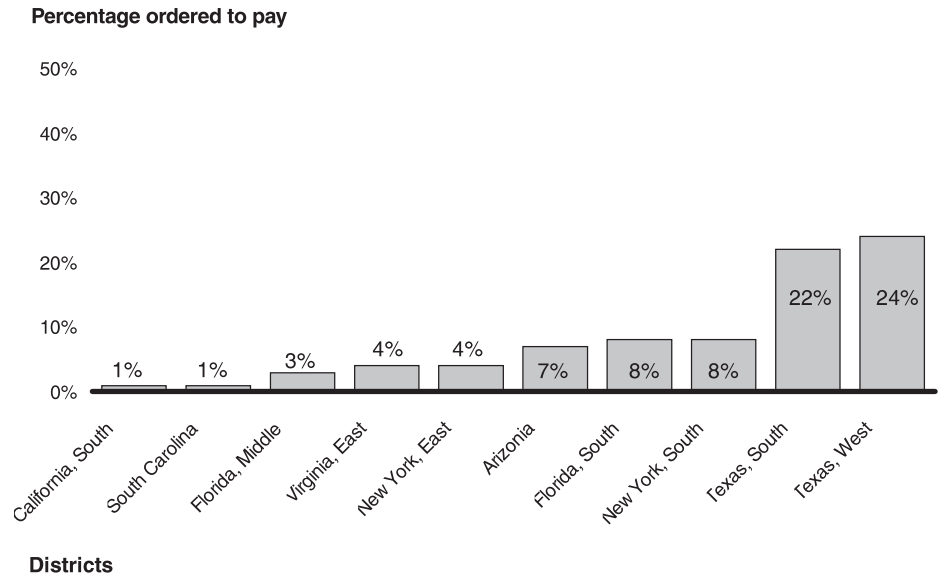
Source: GAO analysis of fiscal year 1997 USSC data.

Figure9: Percentage of Offenders Sentenced to Pay Restitution for Fraud Offenses in Selected Districts



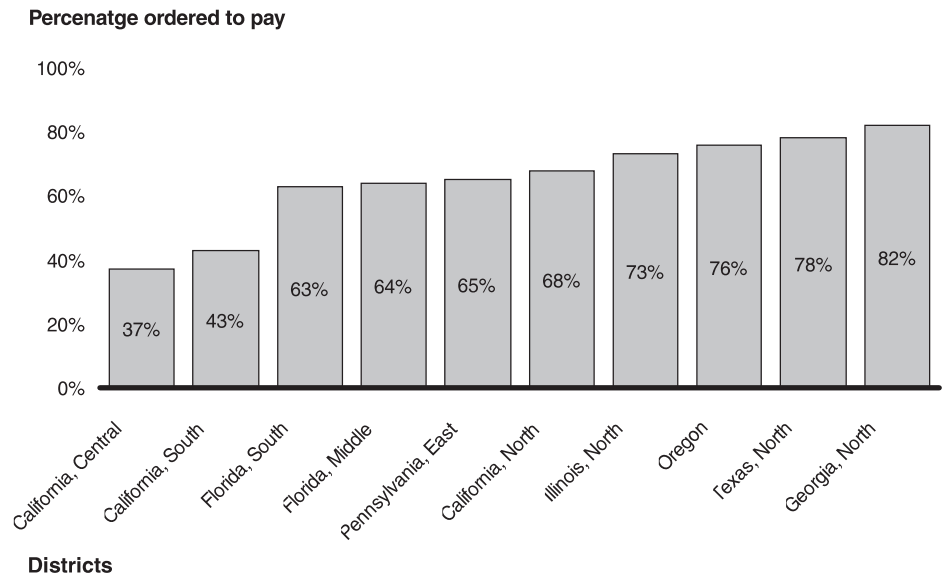
Source: GAO analysis of fiscal year 1997 USSC data.

Figure10: Percentage of Offenders Sentenced to Pay Fines for Drug Offenses in Selected Districts



Source: GAO analysis of fiscal year 1997 USSC data.

Figure11: Percentage of Offenders Sentenced to Pay Restitution for Robbery Offenses in Selected Districts



Source: GAO analysis of fiscal year 1997 USSC data.

Even after controlling for the characteristics mentioned above, we found that pronounced differences existed across judicial circuits and districts for fine and restitution orders. For example, we found that the likelihood of being ordered to pay restitution in some districts among offenders convicted of robbery was five or more times as high as in other districts. Drug trafficking offenders were 10 or more times as likely to be fined in some districts as in others. We found similar results for the other types of offenders and for both fines and restitution, with offenders in some districts many more times as likely to be ordered to pay as in others.

Court officials and prosecutors we interviewed offered several possible explanations why restitution might not have been ordered in all cases. Some officials noted that there is rarely an identifiable victim in drug offenses, making an order to pay restitution unlikely.⁴ These officials also identified bank robbers as being among the poorest of offenders who usually lack the ability to pay a fine, especially if restitution to the bank is ordered. Offenders who commit immigration offenses most likely are aliens who can be deported after being sentenced and serving any time that may be ordered; collection of a fine might be unlikely after deportation.

While these explanations offered some reasons why fines or restitution might not be ordered in all cases, they do not explain why—when controlling for offender characteristics, length of sentence, and type of sentence such as probation, prison, or an alternative—offenders have a far greater likelihood of being ordered to pay a fine or restitution for the same type of offense in one district than in another. We asked court officials and prosecutors in seven of these districts what some possible explanations might be for differences between the districts. These 7 districts were among the 10 largest in number of offenders sentenced for each of the 4 types of offenses. The 10 largest districts were not always the same 10 districts for each of the 4 types of offenses.

While some of these officials acknowledged that they did not know the reasons, other officials offered an explanation that the culture of the court and prosecutor's office within a district could be a factor. The culture included factors such as how the court views an offender's ability to pay fines, how well the civil and criminal attorneys work together in the prosecutor's office, or how well court officials and prosecutors cooperate

⁴ MVRA expanded discretionary restitution by creating community restitution for victimless drug offenses (18 U.S.C. 3663c) allowing for the possibility of restitution, even when an identifiable victim is not involved. This provision was effective for offenses on or after November 1, 1997, the date the revised USSC Sentencing Guidelines went into effect.

with each other in identifying victims and the amount of loss for restitution.

Some officials who had worked in more than one district explained that the culture was very different among the districts in which they had worked. These officials explained that, when trying cases, the diligence with which prosecutors identified victims and their losses was greater in one district than in the other. In one district, officials said there was a greater reluctance to pursue restitution as part of the sentence because there was a strong belief among prosecutors that the offenders would not, in most cases, be able to pay it; whereas in another district, every opportunity was considered by the prosecutors in the prospect of an offender paying a fine or restitution as part of the sentence. Some criminal prosecutors noted that in the district to which they had transferred, civil attorneys sat in the same area as criminal prosecutors; and the civil attorneys, who are more focused on monetary issues, assisted criminal prosecutors in developing the financial aspects, such as restitution, in criminal cases.

The Effect of MVRA on Restitution Orders

MVRA requires the court to order full restitution in certain cases, including most federal offenses involving a crime of violence or a crime against property. Prior to MVRA, the court could waive restitution, in most cases, based on the offender's ability to pay. MVRA's amendments are to be, to the extent constitutionally permissible, effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment, which was April 24, 1996. However, because of an ex post facto issue, DOJ has issued guidelines that any provisions of MVRA for determining whether to impose restitution or the amount of restitution would be applied only prospectively to offenses committed on or after April 24, 1996. In general, the ex post facto clause of the U.S. Constitution has been interpreted to prohibit the application of a law that increases the primary penalty for conduct after its commission.

Our statistical analysis showed that the percentage of offenders ordered to pay restitution, overall, declined after MVRA went into effect, while the results of the multivariate statistical analysis for the four types of offenses were mixed on whether the percentage of offenders changed after MVRA became effective. Overall, for offenders sentenced during fiscal year 1997, 26 percent of offenders who were sentenced under the USSC Guidelines for crimes committed before MVRA went into effect were ordered to pay restitution, compared with 12 percent who were sentenced for crimes

committed after MVRA went into effect⁵ (See table I.1 in app. I.) Our multivariate statistical analyses showed inconsistent results across types of offenses. (See table I.5 in app. I.) For all districts, offenders who committed fraud offenses after MVRA's effective date were about 80 percent as likely to be ordered to pay restitution as those who committed offenses before restitution became mandatory. Larceny offenders who were sentenced for crimes committed after MVRA went into effect were about half as likely to be ordered to pay restitution as those sentenced for crimes committed before MVRA went into effect. Robbers who were sentenced for crimes committed after MVRA went into effect were about one-third more likely to be ordered to pay restitution than robbers sentenced for crimes committed before MVRA went into effect.

In discussing our results, some court officials and prosecutors said that it was still too early to assess the full impact of MVRA. Some officials commented that time is needed to become familiar with and implement MVRA, especially on the part of the Assistant U.S. Attorneys who prosecute cases covered by MVRA. Prosecutors in one district acknowledged that they were not yet fully implementing the law. Most prosecutors, however, commented that they did not remove an offender's responsibility for restitution when drafting plea agreements.⁶ The judges we interviewed, in general, commented that they were implementing the law and did not have constitutional questions with MVRA.

Although we selected larceny, fraud, and robbery because of the likelihood of a victim being due restitution, a substantial percentage of offenders—about one- to two-thirds of offenders sentenced—were still not ordered to pay restitution, even if their crimes were committed after MVRA was passed. Court officials and prosecutors provided some reasons why restitution might not have been ordered in these cases. In some cases, stolen money or assets might have been recovered. In other cases, an offender might have paid the restitution prior to sentencing, removing the need for a restitution order. Another reason cited by officials was that the offense might have been an attempted fraud or attempted robbery, and the offender was arrested prior to obtaining any money from the victim. Some officials also cited an exception to MVRA in ordering mandatory restitution, such as in cases where the number of victims is so large that it

⁵ For our analysis, for a crime to be considered subject to MVRA, it had to be identified in the database as having been committed on or after April 24, 1996. Overall, 55 percent of offenders in our database committed crimes after MVRA became effective.

⁶ This is consistent with MVRA because the mandatory restitution provisions of the act apply to plea agreements.

makes paying restitution impracticable. One district had a number of telemarketing schemes in which large numbers of victims were defrauded of small amounts. It was not practical to identify all victims and obtain restitution for them.

In response to our questions, Chief Probation Officers in the Northern District of California, which includes San Francisco, and the Central District of California, which includes Los Angeles, provided information from local databases on bank robbery cases where restitution had not been ordered. These databases were different from the USSC database, and the information covered different time periods. Information provided by the Chief Probation Officer in the Northern District of California showed that restitution was ordered in all bank robbery cases where there was monetary loss. However, restitution was not ordered in bank robbery cases where there was no loss or where the stolen money was recovered. In the Central District of California, the primary reason given when restitution had not been ordered as part of the sentence was, as in the Northern District, that there was no loss or that the stolen money had been recovered. We noted that, in some cases, probation officers recommended restitution, which would have been based on an actual loss, as part of the sentence; but the judge did not follow the recommendation and did not order restitution as part of the sentence. In other cases, the probation officer did not recommend restitution, and the judge did not order it. According to the Chief Probation Officer, the length of the sentences—over 80 years in prison in 2 of the cases—might have been a factor considered by the probation officer in not recommending to the judge that restitution be part of the sentence.

Conclusions

Although offender characteristics, type of offense, and the nature of the sentence all played a role, the judicial circuit or district where an offender was sentenced was a major factor in determining the likelihood of an offender being ordered to pay a fine or restitution during fiscal year 1997. This major variation among judicial circuits and districts occurred overall for all federal offenders sentenced under sentencing guidelines during that year; and, although occurring less, this variation persisted when we performed multivariate statistical analysis for federal offenders sentenced under sentencing guidelines for four types of offenses. The large statistical variation among circuits and districts raises a question, on a broad level, about whether the goal of uniformity in the imposition of fines and restitution is being met. Offenders could be much more likely in some jurisdictions than in others to be ordered to pay a fine or restitution for the same type of crime.

Statistics for fiscal year 1997 are mixed on whether offenders were more likely to be ordered to pay restitution after MVRA, which was intended to eliminate much of the discretion judges previously had in waiving restitution for certain types of crime. Substantial percentages of offenders sentenced for crimes such as fraud, robbery, and larceny—which, by their nature, indicate a need for restitution to a victim—are not being sentenced to pay restitution by the courts. However, it may be too early to see the full impact of the results of the legislation; and there also may be mitigating circumstances, such as recovery of stolen money, in explaining why restitution was not ordered in a particular case.

Agency Comments and Our Evaluation

We requested comments from DOJ, USSC, and AOUSC. DOJ and USSC provided written comments on a draft of this report (see apps. III and IV). AOUSC provided technical comments. All three agencies provided technical corrections and suggestions.

DOJ generally agreed with the findings in the draft and advised us of the steps that have been taken to help ensure that MVRA is properly implemented. These steps include memoranda providing guidance on MVRA and additional training efforts. DOJ's comments recognize that the imposition of restitution is critical to their law enforcement efforts and that, while a number of steps have been taken, more remains to be done to increase the number of cases in which restitution is imposed.

USSC raised several issues. First, USSC noted that training efforts are planned or under way within the offices of the federal courts to provide guidance and training on the correct application of MVRA. Second, USSC also raised a general concern that the scope and conclusions of the report rely perhaps too heavily on use of the 1997 data. Although USSC acknowledges that 1997 data are the only data currently available to study MVRA, they believe that replicating the study using future data might mitigate the idiosyncrasies in any given year's caseload. While the scope suggested by USSC might be beneficial, USSC also does not provide any evidence that expanding the scope would change our overall conclusion that the judicial district or circuit where an offender was sentenced was a major factor in determining the likelihood of an offender being ordered to pay a fine or restitution. We incorporated other suggestions by USSC as appropriate.

We have incorporated technical comments and suggestions from the three agencies in the final report, as appropriate.

We are sending copies of this report to Patrick J. Leahy, the Ranking Minority Member of your committee, and Robert C. Scott, the Ranking Minority Member of your subcommittee; Charles E. Grassley, the Chairman, and Robert G. Torricelli, the Ranking Minority Member, of the Subcommittee on Administrative Oversight and the Courts, Senate Committee on the Judiciary; Henry J. Hyde, the Chairman, and John Conyers, Jr., the Ranking Minority Member, of the House Committee on the Judiciary; Leonidas Ralph Mecham, Director, AOUSC; Timothy B. McGrath, Interim Staff Director, U.S. Sentencing Commission; the Honorable Janet Reno, Attorney General; and other interested parties. Copies will be made available to others upon request.

Major contributors to this report are listed in appendix V. If you have any questions about this report, please call me on (202) 512-8777.

A handwritten signature in black ink that reads "Richard M. Stana". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Richard M. Stana
Associate Director
Administration of Justice Issues

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Abbreviations

AOUSC	Administrative Office of the United States Courts
DOJ	Department of Justice
MVRA	Mandatory Victims Restitution Act
USSC	United States Sentencing Commission

Statistical Analysis of Offenders Ordered to Pay Fines and Restitution, Fiscal Year 1997

To investigate factors affecting the likelihood of convicted federal offenders being ordered to pay fines or restitution as part of their sentence, we used data provided by the United States Sentencing Commission (USSC) for fiscal year 1997. For our review, we considered (1) selected demographic characteristics of the offenders (i.e., sex, race, citizenship, education, and number of dependents); (2) the type of offense they committed (i.e., whether it involved a property, drug, firearms, fraud, immigration, violent, or other offense); and (3) other characteristics of their offense (i.e., whether it occurred before or after the Mandatory Victims Restitution Act (MVRA) went into effect) and sentencing (i.e., whether and for how long they were sentenced to prison or probation, whether there was an alternative sentence imposed, and whether there was more than a single count of conviction). We also considered the circuit or district in which the sentencing occurred.

Over 48,000 federal offenders were sentenced under USSC Guidelines in fiscal year 1997. About 19 percent of these offenders were ordered to pay fines, and about 20 percent were ordered to pay restitution. Few offenders were ordered to pay both restitution and a fine (about 2 percent). Table I.1 provides descriptive information on the percentages of offenders ordered to pay fines and restitution across categories of offenders, offense characteristics, and other components of their sentences. Regarding offender characteristics, females were more likely to be ordered to pay restitution than males, though there was little difference between those two groups in the percentages ordered to pay fines. Hispanics and noncitizens—two variables that were strongly associated—were less likely to be ordered to pay fines and restitution than other offenders. The number of dependents, education, and having a fine waived because of inability to pay were three proxies we used for determining offenders' ability to pay and that were available in the USSC data. While better educated offenders were more likely to be ordered to pay fines and restitution, having dependents did not have much of an effect on whether an offender was ordered to pay a fine or restitution; and having had a fine waived because of inability to pay had little effect on whether restitution was ordered.

Appendix I
Statistical Analysis of Offenders Ordered to Pay Fines and Restitution, Fiscal Year 1997

Table I.1: Percentages of Offenders Ordered to Pay Fines or Restitution in Fiscal Year 1997, by Various Characteristics

Characteristics		Fines	Restitution
Sex	Male	19	18
	Female	17	31
Race	White	26	31
	Black	17	23
	Hispanic	9	4
	Other	25	34
Citizenship	Citizen	21	25
	Noncitizen	12	4
Education	Less than high school	13	11
	High school graduate	20	23
	Some college	22	32
	College graduate	33	36
Number of dependents	None	20	22
	One or more	18	18
Fine waived	Yes	N/A	18
	No	N/A	20
Offense type	Violent	12	50
	Property	32	50
	Drug	17	1
	Firearms	17	9
	Fraud	17	63
	Immigration	6	Less than 1
	Other	35	24
Date of commission	Pre-MVRA	20	26
	Post-MVRA	16	12
Counts of conviction	One	18	17
	Two or more	19	30
Type of sentence	Prison	14	17
	Probation	36	30
Alternative sentence	No	18	17
	Yes	25	41

Source: GAO analysis of fiscal year 1997 USSC data.

As noted in the letter section of this report, when we considered the various factors that affected the likelihood of whether the offender was ordered to pay fines or restitution, one of the most important was the type of offense committed. While 6 percent of immigration offenders were

ordered to pay a fine, fines were ordered for 12 percent of violent offenders; 17 percent of drug, firearm, and fraud offenders; and 32 percent of property offenders. Similarly, while less than 1 percent of drug or immigration offenders were ordered to pay restitution, 50 percent of the violent and property offenders, and 63 percent of the fraud offenders, were ordered to pay restitution.¹ Offenders who committed offenses after MVRA went into effect were less likely, overall, to be ordered to pay fines or restitution than offenders who committed offenses prior to MVRA. Offenders with multiple counts of conviction were more likely than those with a single count of conviction to be ordered to pay restitution; and those who received probation rather than prison sentences, and who received an alternative sentence instead of or in addition to their prison or probation sentence were more likely to be ordered to pay fines or restitution.

The circuit where an offender was sentenced was strongly associated with whether the sentence included an order to pay a fine or restitution. Tables I.2 and I.3 show the percentages of offenders ordered to pay fines or restitution across the 12 circuits and 94 judicial districts. Table I.2 shows that the percentages of offenders ordered to pay fines ranged from 7 percent to 42 percent, while the percentages of offenders ordered to pay restitution across the 12 circuits ranged from 15 percent to 32 percent.

Table I.2: Percentages of Offenders Ordered to Pay Fines or Restitution in Fiscal Year 1997, by Judicial Circuit

Circuit	Fines	Restitution
District of Columbia	7	25
First	14	16
Second	16	16
Third	35	25
Fourth	23	20
Fifth	19	15
Sixth	23	30
Seventh	42	32
Eighth	15	24
Ninth	11	16
Tenth	17	20
Eleventh	18	21

Source: GAO analysis of fiscal year 1997 USSC data.

Table I.3 shows that across the 94 districts, the percentages of offenders ordered to pay fines and restitution ranged from 1 percent to 84 percent, and 3 percent to 49 percent, respectively.

¹ In fiscal year 1997, the percentage of all federal offenders in the following broad categories were as follows: drugs (39 percent); fraud (14 percent); immigration (14 percent); property (7 percent); violent (6 percent); firearms (5 percent); all other (15 percent).

Appendix I
Statistical Analysis of Offenders Ordered to Pay Fines and Restitution, Fiscal Year 1997

Table I.3: Percentages of Offenders Ordered to Pay Fines or Restitution in Fiscal Year 1997, by Judicial District

District	Fines	Restitution
Alabama Middle	21	19
Alabama North	44	29
Alabama South	3	19
Alaska	27	29
Arizona	8	10
Arkansas East	8	17
Arkansas West	47	38
California Central	12	21
California East	9	19
California North	19	23
California South	3	3
Colorado	14	18
Connecticut	16	19
Delaware	24	31
District of Columbia	7	25
Florida Middle	7	26
Florida North	17	21
Florida South	9	17
Georgia Middle	44	11
Georgia North	33	28
Georgia South	35	17
Guam	27	13
Hawaii	25	28
Idaho	40	38
Illinois Central	20	17
Illinois North	35	40
Illinois South	84	14
Indiana North	23	45
Indiana South	55	26
Iowa North	11	24
Iowa South	5	15
Kansas	19	29
Kentucky East	12	25
Kentucky West	41	27
Louisiana East	22	24
Louisiana Middle	16	46
Louisiana West	33	28
Maine	15	23
Maryland	11	22
Massachusetts	19	18
Michigan East	18	26
Michigan West	56	34
Minnesota	12	26
Mississippi North	30	31
Mississippi South	56	27
Missouri East	18	19
Missouri West	14	22
Montana	10	34
Nebraska	6	17
Nevada	31	44

Appendix I
Statistical Analysis of Offenders Ordered to Pay Fines and Restitution, Fiscal Year 1997

District	Fines	Restitution
New Hampshire	10	13
New Jersey	45	22
New Mexico	2	7
New York East	12	9
New York North	24	13
New York South	16	19
New York West	25	29
North Carolina East	38	25
North Carolina Middle	14	28
North Carolina West	22	21
North Dakota	8	38
Northern Mariana Islands	18	9
Ohio North	19	37
Ohio South	26	27
Oklahoma East	1	27
Oklahoma North	45	48
Oklahoma West	17	18
Oregon	6	21
Pennsylvania East	36	33
Pennsylvania Middle	41	25
Pennsylvania West	9	20
Puerto Rico	7	8
Rhode Island	20	32
South Carolina	5	21
South Dakota	33	37
Tennessee East	9	27
Tennessee Middle	19	32
Tennessee West	12	32
Texas East	15	27
Texas North	14	33
Texas South	17	9
Texas West	17	7
Utah	40	23
Vermont	8	24
Virginia East	28	17
Virginia West	42	18
Virgin Islands	25	8
Washington East	9	14
Washington West	23	29
West Virginia North	17	12
West Virginia South	34	28
Wisconsin East	55	35
Wisconsin West	2	49
Wyoming	20	36

Source: GAO analysis of fiscal year 1997 USSC data.

Because of the pronounced differences across offense types in the likelihood of an offender being ordered to pay fines and restitution and the strong associations between offense types and many of the other factors we reviewed, including the circuit or district in which offenders were

sentenced, we conducted a series of multivariate analyses for specific types of offenses to estimate the effects of the different factors net of one another.² We used logistic regression techniques to estimate, simultaneously, the effects of these different factors on the odds of an offender being ordered to pay fines among larceny, drug, and fraud offenses and then to estimate the effects of these factors on the odds of an offender being ordered to pay restitution among larceny, robbery, and fraud offenses. In one series of regression models, we employed circuit as one of our independent variables to determine how much variation across circuits, in the odds on ordering fines and restitution, persisted for these types of offenses after other factors were controlled³. In a second series of regressions involving these same 4 offense types, we restricted our analysis to offenders in the 10 districts that sentenced the largest numbers of offenders of each type to get a sense of the extent of the variation across districts.⁴ We selected these offenses because they represented sizable categories of offenders and—in the case of robbery (a subset of violent offenders), larceny (a subset of property offenders), and fraud offenders—because regulations imply that restitution should be ordered for these types of crimes.⁵ For the different types of offenses we considered, we first estimated how the odds on a fine or restitution being ordered varied across circuits or across the larger districts before controlling for other factors. We then controlled for the other factors mentioned above

²For example, a large number of offender demographic characteristics were associated with the type of offense for which the offender was sentenced. Whereas only slightly more than one-fourth of all drug offenders were white, over half of all fraud offenders were white. The percentages of females among robbery, drug, fraud, and larceny offenders were 6 percent, 11 percent, 24 percent, and 32 percent, respectively. More than 80 percent of fraud offenders were high school graduates, while 76 percent of larceny offenders, 63 percent of robbery offenders, and 50 percent of drug offenders were high school graduates.

³Logistic regression is a standard procedure for estimating the size and significance of the effects of categorical or continuous factors on dichotomous outcomes, such as whether offenders were or were not ordered to pay restitution. The size of the effects are estimated by odds ratios, which indicate how the odds on being in one category of the outcome measure (in our case, being ordered to pay restitution or fines) varies across categories or values of the various factors considered. The significance of those factors is tested by standard chi-square values, or by Wald statistics, which approximate chi-square and follow the same underlying probability distribution.

⁴ Because of the large number of districts and the small number of specific types of offenders in many of them, it was not possible to look at all districts. We chose the 10 districts in which the largest numbers of offenders of each type were sentenced to enhance the statistical power associated with our multivariate analyses.

⁵Offenders with multiple counts of conviction were classified on the basis of their primary offense of conviction, as indicated in the USSC database.

(i.e., offender demographic characteristics, offender's ability to pay, and other characteristics of the offense and of the offender's sentence).⁶

In each of the following tables, the coefficients shown are odds ratios, which indicate how the odds on being ordered to pay fines or restitution vary across the districts or circuits used in our analyses and how they varied across the categories or levels of the other factors we considered. The odds on being ordered to pay a fine or restitution for a particular category of offender were obtained by simply dividing the number of offenders who were ordered to pay a fine or restitution by the number of offenders who were not ordered to pay. For example, if in one circuit 1,000 offenders were ordered to pay restitution while 100 were not, the odds on being ordered to pay restitution in that circuit equal $1,000/100 = 10.0$. If in a second circuit 4,000 offenders were ordered to pay restitution while 1,000 were not, the odds on paying restitution in that circuit are 4.0. The odds ratio obtained by dividing the former odds by the latter (i.e., $10.0/4.0 = 2.5$) provides an estimate of the differences across the two circuits and can be interpreted as indicating that the odds on being ordered to pay restitution are 2.5 times greater in one circuit than in the other.

In our analyses, we chose the circuit or district with the lowest odds on offenders being ordered to pay a fine or restitution, before other factors were controlled, and calculated odds ratios, which indicated how much higher the odds were in the other circuits or districts relative to that one. We call the circuit or district with the lowest odds the referent circuit or district. Hence, all of the odds ratios shown for the first model we considered for each type of offender in the tables which follow are greater than 1.0. It should be noted, however, that in many instances the circuit or district that had the lowest odds on ordering offenders to pay fines and restitution, before other factors are controlled, was not the circuit that had the lowest odds after other factors were controlled. This is why some of the odds ratios for circuits or districts for the second model in the following tables, which controls for the effects of these other factors, are less than 1.0. An odds ratio of 0.5 indicates that, after other factors are controlled, the odds on being ordered to pay fines or restitution in the particular district that the odds ratio corresponds to are only half as great as in the referent district to which it is compared.

⁶One shortcoming of the USSC data set for the purpose of our analyses is that it includes no information on offender income, which would have helped us to control for offenders' ability to pay. We included education, number of dependents, and whether a fine was waived (because of an inability to pay or because the burden the fine would have caused the offender's dependents) among the factors in our model as proxies for income or ability to pay.

Regarding the other variables used in our analyses, it should be recognized that the odds ratios for Blacks, Hispanics, and Others reflect how similar or different those groups are in terms of their odds on being ordered to pay fines or restitution from the referent category, which is Whites. The three odds ratios for education (i.e., high school, more than high school, and missing) indicate how different offenders in those categories are from offenders with less than a high school education. The other offender characteristics (i.e., sex, citizenship, whether fines were waived because of the offenders inability to pay, and whether the offender had any dependents) were each divided into two categories; and the odds ratios for them reflect how females, noncitizens, and offenders whose fines were waived because of inability to pay or had dependents differed from males, citizens, offenders whose fines were not waived, or who had no dependents, respectively. Among the sentence characteristics, the Prison and Alternative Sentence variables indicate how different offenders sentenced to prison, or given an alternative sentence, were from offenders not sentenced to prison or not given an alternative sentence. Similarly, the variables labeled “more than one count,” “after MVRA passed,” and (in the case of fines) “restitution ordered” reflect (1) how different offenders who had multiple counts of conviction differed from offenders with a single count; (2) how much those whose offenses occurred after MVRA differed from those whose offenses occurred before; and (3) how much offenders who were ordered to pay restitution differed from those who were not, in terms of their odds on being ordered to pay fines. The length of sentence variable was measured in years and entered into our regression analyses as a linear term. We used an interaction term in our analyses to allow its effect to vary on the odds of an offender being ordered to pay a fine or restitution, depending on whether the sentence involved time in prison or probation.

Table I.4 shows the likelihood of fines being ordered for larceny, drug, and fraud offenders, before (model 1) and after (model 2) the other factors that we thought would affect fines were controlled. For both larceny and drug offenses, there were significant similar effects for the characteristics of sex, race and education, and significant effects for other factors as well on an offender’s likelihood of having to pay a fine. Among larcenists and drug traffickers, Blacks and Hispanics were less likely to be ordered to pay fines than Whites, and females were less likely than males, while better educated offenders were more likely than offenders with less than a high school education to be so ordered. Even after controlling for these effects, however, the differences across circuits remained pronounced. However, in the case of imposing fines for fraud, the differences across circuits were not as pronounced.

Appendix I
Statistical Analysis of Offenders Ordered to Pay Fines and Restitution, Fiscal Year 1997

Table I.4: Odds Ratios Indicating the Effects of Judicial Circuit and Other Factors on Fine Orders

Circuit	Larceny		Drugs		Fraud	
	Model 1 ^a	Model 2 ^a	Model 1 ^a	Model 2 ^a	Model 1 ^a	Model 2 ^a
District of Columbia						
First	13.67 ^b	13.14 ^b	2.06	2.69	2.02 ^b	1.32
Second	11.93 ^b	4.18	2.18	2.75 ^b	1.46	0.56
Third	19.10 ^b	17.86 ^b	20.09 ^b	40.08 ^b	2.20 ^b	2.61 ^b
Fourth	28.52 ^b	11.11 ^b	4.99 ^b	6.54 ^b	1.19	1.16
Fifth	30.99 ^b	20.82 ^b	7.85 ^b	17.81 ^b	1.57	2.42 ^b
Sixth	39.16 ^b	12.91 ^b	5.97 ^b	7.96 ^b	1.47	1.74
Seventh	9.42 ^b	9.05	40.86 ^b	61.51 ^b	1.76	1.52
Eighth	14.26 ^b	14.47 ^b	3.38 ^b	4.33 ^b	1.06	1.02
Ninth	10.87 ^b	4.29	2.76 ^b	3.87 ^b	1.35	0.75
Tenth	24.73 ^b	15.33 ^b	3.23 ^b	5.69 ^b	1.31	1.45
Eleventh	35.67 ^b	29.01 ^b	4.21 ^b	5.68 ^b	1.16	1.32
Offender characteristics						
Race						
Black		0.59 ^b		0.71 ^b		0.60 ^b
Hispanic		0.62		0.61 ^b		0.66 ^b
Other		1.15		1.18		1.71 ^b
Sex						
Female		0.67 ^b		0.58 ^b		0.77 ^b
Education						
High school		1.62 ^b		1.19 ^b		0.83
More than high school		1.59 ^b		1.36 ^b		0.95
Missing		0.91		0.81		0.08 ^b
Citizenship						
Not a citizen		0.93		0.59 ^b		0.41 ^b
Ability to pay						
Fine waived		0.04 ^b		0.10 ^b		0.04 ^b
One or more dependents		1.11		0.73 ^b		1.18 ^b
Sentence characteristics						
Prison (vs. probation)		0.11 ^b		0.81		0.41 ^b
Alternative sentence		0.74		0.94		0.76 ^b
Prison/alternative interaction		1.43		2.11 ^b		1.73 ^b
More than one count		0.92		1.06		1.32 ^b
After MVRA		1.43 ^b		0.92		0.87
Restitution ordered		0.27 ^b		0.65		0.26 ^b
Length of sentence		0.62 ^b		1.03		0.94
Prison/sentence interaction		1.44 ^b		0.99		1.09

^aThe referent categories to which the other circuits were compared.

^bOdds ratios that are significant at the .05 level of statistical analysis.

Source: GAO analysis of fiscal year 1997 USSC data.

The results were similar when we reviewed restitution orders. Table I.5 shows how the odds on restitution being ordered for larceny, robbery, and fraud offenders varied across circuits. Considering the variation across circuits in which larceny offenders were sentenced, table I.5 shows that offenders sentenced for larceny in the 10th circuit were 2.5 times as likely to be ordered to pay restitution than those sentenced in the 11th circuit. When controlling for the other factors describing larceny offenders and their crime, there were also differences. Larceny offenders who were not citizens were about half as likely to be ordered to pay restitution as those who were citizens. Offenders sentenced to prison or convicted of more than one charge were also more likely to be ordered to pay restitution. Offenders who had fines waived because of inability to pay were twice as likely to be ordered to pay restitution. Even when the effects of these other factors were included in model 2, there remained sizable and significant variation in the likelihood of being ordered to pay restitution, depending on the circuit in which the offender was sentenced.

The variation across circuits, before and after controls, was even more pronounced when looking at the odds on ordering restitution for robbery offenders. Minority offenders were less likely to be ordered to pay restitution than white offenders, and those sentenced for crimes committed after MVRA went into effect and those convicted of more than one offense were about 1.5 times as likely to be ordered to pay restitution. However, when holding crime and offender characteristics constant, offenders sentenced in many circuits were 10 times or more as likely to be ordered to pay restitution as those tried in the D.C. circuit.

For fraud offenses too, demographic, crime, and offense characteristics had pronounced effects on the likelihood of imposing restitution. For example, noncitizen offenders were less likely to be ordered to pay restitution, while female offenders were more likely to be ordered to pay restitution. Those offenders who received prison sentences over probation sentences were more than eight times as likely to be ordered to pay restitution. Again, even after controlling for the differing effects of demographics and offense characteristics, the odds of being ordered to pay restitution varied significantly, according to the circuit in which the offender was sentenced.

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Table I.5: Odds Ratios Indicating the Effects of Judicial Circuit and Other Factors on Restitution Orders

Circuit	Larceny		Robbery		Fraud	
	Model 1	Model 2	Model 1	Model 2	Model 1	Model 2
District of Columbia	4.89 ^a	3.12 ^a	^b	^b	1.13	1.04
First	1.57	0.78	4.72	3.91	1.39	1.66 ^a
Second	1.42	0.79	3.53	3.52	^b	^b
Third	1.76 ^a	1.03	6.85 ^a	6.60 ^a	1.69	1.32 ^a
Fourth	1.59 ^a	2.13 ^a	9.17 ^a	8.49 ^a	1.40	1.15
Fifth	1.53 ^a	1.56 ^a	13.78 ^a	12.83 ^a	1.37	1.58 ^a
Sixth	1.14	1.86 ^a	15.44 ^a	14.10 ^a	2.44	2.10 ^a
Seventh	2.78 ^a	1.65	13.28 ^a	11.92 ^a	2.12	1.74 ^a
Eighth	2.51 ^a	1.54	11.88 ^a	11.14 ^a	1.76	1.42 ^a
Ninth	1.65 ^a	1.12	5.77 ^a	5.13 ^a	1.41	1.16
Tenth	2.54 ^a	2.08 ^a	10.95 ^a	10.07 ^a	1.76	1.47 ^a
Eleventh	^b	^b	10.93 ^a	10.09 ^a	2.57	2.26 ^a
Offender characteristics						
Race						
Black		0.68 ^a		0.73 ^a		1.19 ^a
Hispanic		0.69 ^a		0.61 ^a		0.79 ^a
Other		0.89		0.75		1.31 ^a
Sex						
Female		1.16		0.79		1.23 ^a
Education						
High school		1.01		1.13		1.45 ^a
More than high school		1.21		0.97		1.32 ^a
Missing		1.06		1.35		0.48 ^a
Citizenship						
Not a citizen		0.58 ^a		1.23		0.48 ^a
Ability to pay						
Fine waived		2.06 ^a		0.86		2.14 ^a
One or more dependents		1.28 ^a		1.11		1.04
Sentence characteristics						
Prison (vs. probation)		3.74 ^a		1.22		8.24 ^a
Alternative sentence		1.24		1.00		1.39 ^a
Prison/alternative interaction		1.51		1.28		0.74 ^a
More than one count		1.64 ^a		1.72 ^a		0.96
After MVRA		0.54 ^a		1.41 ^a		0.81 ^a
Length of sentence		1.72 ^a		1.02		1.67 ^a
Prison/sentence interaction		0.68^a		0.97		0.64^a

^aOdds ratios that are significant at the .05 level of statistical analysis.

^bThe referent categories to which the other circuits were compared.

Source: GAO analysis of fiscal year 1997 USSC data.

Additional analyses of the four types of offenses undertaken that involved looking at the 10 largest districts exhibited similar pronounced variation across districts that was not accounted for by the characteristics of offenders and other elements of their sentences. Given that the sample size was reduced when only the 10 largest districts were considered, standard errors associated with the odds ratios estimating the effects of the different factors we considered were often larger, including the effect of which district an offender was sentenced. Nonetheless, some districts were much more likely than others to order offenders to pay restitution or fines for some types of offenses, after other factors were controlled.

Tables I.6 and I.7 show how fine and restitution orders varied across the 10 districts in which the largest numbers of larceny and fraud offenders, respectively, were sentenced. Table I.8 shows how fine orders varied across the 10 districts in which the largest numbers of drug offenders were sentenced, and table I.9 shows how restitution orders varied across the 10 districts in which the largest numbers of robbery offenders were sentenced.

Table I.6: Odds Ratios Indicating the Effects of Judicial Districts and Other Factors on Fine and Restitution Orders for Larceny Offenders

District	Fines		Restitution	
	Model 1	Model 2	Model 1	Model 2
California-Central	1.12	1.93	2.82 ^a	1.39
Florida-South	^b	^b	3.56 ^a	1.76
Georgia-Middle	24.74 ^a	177.36 ^a	^b	^b
Kentucky-West	10.42 ^a	3.76 ^a	1.59	4.19 ^a
Louisiana-West	12.00 ^a	34.20 ^a	2.73 ^a	3.51 ^a
New Jersey	2.40	11.60 ^a	4.65 ^a	2.05
New York-East	1.04	0.94	2.51 ^a	0.89
North Carolina-East	4.99 ^a	5.36 ^a	3.76 ^a	4.46 ^a
Texas-West	8.27 ^a	11.95 ^a	2.15	2.24
Virginia-East	5.15 ^a	5.32 ^a	2.90 ^a	2.95 ^a
Offender characteristics				
Race				
Black		0.57		0.98
Hispanic		1.36		0.86
Other		0.98		1.07
Sex				
Female		0.86		0.87
Education				
High school		2.64 ^a		0.89
More than high school		1.87		1.10
Missing		4.72 ^a		0.56
Citizenship				
Not a citizen		0.67		0.88
Ability to pay				

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District	Fines		Restitution	
	Model 1	Model 2	Model 1	Model 2
Fine waived		0.02 ^a		2.06 ^a
One or more dependents		1.22		1.64 ^a
Sentence characteristics				
Prison (vs. probation)		0.08 ^a		4.00 ^a
Alternative sentence		0.40		2.52 ^a
Prison/alternative interaction		1.46		0.83
More than one count		0.83		1.60
After MVRA passed		0.83		0.57 ^a
Restitution ordered		0.29 ^a		N/A
Length of sentence		0.60 ^a		1.54 ^a
Prison/sentence interaction		2.01 ^a		0.60 ^a

Note: N/A represents not applicable.

^aOdds ratios that are significant at the .05 level of statistical analysis.

^bThe referent categories to which the other districts were compared.

Source: GAO analysis of fiscal year 1997 USSC data.

Table I.7: Odds Ratios Indicating the Effects of Judicial Districts and Other Factors on Fine and Restitution Orders for Fraud Offenders

District	Fines		Restitution	
	Model 1	Model 2	Model 1	Model 2
California-Central	2.77 ^a	1.88	1.53 ^a	0.54 ^a
Florida-Middle	1.49	2.37 ^a	4.96 ^a	2.06 ^a
Florida-South	1.76	3.10 ^a	5.11 ^a	2.14 ^a
Illinois-North	3.56 ^a	4.58 ^a	3.43 ^a	1.09
New York-East	3.50 ^a	1.38	1.13	0.52 ^a
New York-South	2.98 ^a	3.05 ^a	2.12 ^a	0.83
Pennsylvania-East	5.40 ^a	18.00 ^a	4.39 ^a	1.42
South Carolina	^b	^b	1.72 ^a	0.56 ^a
Texas-North	3.80 ^a	14.40 ^a	4.52 ^a	1.28
Texas-West	1.57	10.58 ^a	^b	^b
Offender characteristics				
Race				
Black		0.70		1.20
Hispanic		0.82		0.75
Other		1.41		1.02
Sex				
Female		0.73		1.15
Education				
High school		0.65		1.54 ^a
More than high school		0.97		1.48 ^a
Missing		0.01 ^a		0.34 ^a

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Statistical Analysis of Offenders Ordered to Pay Fines and Restitution, Fiscal Year 1997

District	Fines		Restitution	
	Model 1	Model 2	Model 1	Model 2
Citizenship				
Not a citizen		0.60		0.50 ^a
Ability to pay				
Fine waived		0.03 ^a		1.94 ^a
One or more dependents		1.65 ^a		1.02
Sentence characteristics				
Prison (vs. probation)		0.35 ^a		6.28 ^a
Alternative sentence		0.59 ^a		1.45 ^a
Prison/alternative interaction		2.73 ^a		0.83
More than one count		1.09		0.97
After MVRA passed		0.69		0.90
Restitution ordered		0.30 ^a		N/A
Length of sentence		0.94		1.50 ^a
Prison/sentence interaction		1.03		0.71 ^a

Note: N/A represents not applicable.

^aOdds ratios that are significant at the .05 level of statistical analysis.

^bThe referent categories to which the other districts were compared.

Source: GAO analysis of fiscal year 1997 USSC data.

Table I.8: Odds Ratios Indicating the Effects of Judicial Districts and Other Factors on Fine Orders for Drug Offenders

District	Model 1	Model 2
Arizona	6.80 ^a	15.88 ^a
California-South	^b	^b
Florida-Middle	2.59	3.07
Florida-South	9.02 ^a	7.27 ^a
New York-East	3.11	2.30
New York-South	8.43 ^a	10.97 ^a
South Carolina	0.96	0.37
Texas-South	26.84 ^a	98.13 ^a
Texas-West	31.25 ^a	99.20 ^a
Virginia-East	3.68 ^a	1.51
Offender characteristics		
Race		
Black		0.89
Hispanic		0.38 ^a
Other		0.99
Sex		
Female		0.54 ^a
Education		
High school		1.27 ^a
More than high school		1.56 ^a
Missing		1.38
Citizenship		

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District	Model 1	Model 2
Not a citizen		0.47 ^a
Ability to pay		
Fine waived		0.07 ^a
One or more dependents		0.91
Sentence characteristics		
Prison (vs. probation)		0.50
Alternative sentence		0.45
Prison/alternative interaction		1.08
More than one count		1.10
After MVRA passed		0.82
Restitution ordered		3.74 ^a
Length of sentence		1.02
Prison/sentence interaction		1.03

^aOdds ratios that are significant at the .05 level of statistical analysis.

^bThe referent categories to which the other districts were compared.

Source: GAO analysis of fiscal year 1997 USSC data.

Table I.9: Odds Ratios Indicating the Effects of Judicial Districts and Other Factors on Restitution Orders for Robbery Offenders

District	Model 1	Model 2
California-Central		
California-North	3.70 ^a	3.88 ^a
California-South	1.23	1.02
Florida-Middle	3.01 ^a	3.39 ^a
Florida-South	2.94 ^a	4.49 ^a
Georgia-North	7.42 ^a	8.08 ^a
Illinois-North	4.80 ^a	5.30 ^a
Oregon	5.49 ^a	5.83 ^a
Pennsylvania-East	3.29 ^a	4.76 ^a
Texas-North	6.03 ^a	5.99 ^a
Offender characteristics		
Race		
Black		0.71
Hispanic		0.40 ^a
Other		0.26 ^a
Sex		
Female		1.70
Education		
High school		1.33
More than high school		0.90
Missing		0.88
Citizenship		
Not a citizen		5.52 ^a
Ability to pay		
Fine waived		0.72
One or more dependents		0.60 ^a
Sentence characteristics		
Prison (vs. probation)		N/A
Alternative sentence		N/A
Prison/alternative interaction		N/A
More than one count		1.63 ^a
After MVRA passed		1.82 ^a

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District	Model 1	Model 2
Length of sentence		0.98
Prison/sentence interaction		N/A

Note: N/A represents not applicable.

^aOdds ratios that are significant at the .05 level of statistical analysis.

^b The referent categories to which the other districts were compared.

Source: GAO analysis of fiscal year 1997 USSC data.

One of the surprising findings in our analyses, in addition to the considerable variation in the likelihood of an offender being ordered to pay restitution and fines across circuits and districts, was the inconsistent difference across the types of offenses we considered in the effect of whether their crimes were committed before or after the MVRA went into effect. Among larceny and fraud offenders, those who committed offenses after MVRA went into effect were less likely to be ordered to pay restitution than those whose offenses occurred before MVRA, while among robbers, restitution was more likely to be ordered after MVRA than before. Since we were interested in knowing whether MVRA had affected the extent of variation in restitution across circuits and districts, we reanalyzed the data using samples of pre-MVRA cases in one set of analyses and post MVRA cases in another. As table I.10 shows, MVRA did not diminish the variation across circuits (the same is true across the largest districts) in the likelihood of an offender being ordered to pay restitution, nor did it seem to consistently alter the effects of any of the offense characteristics across the three types of offenses we reviewed.

Table I.10: Odds Ratios Indicating the Effects of Judicial Circuit and Other Factors on Restitution Orders in Fiscal Year 1997, for Offenders Whose Offenses Occurred Before and After MVRA Went into Effect

Circuit	Larceny		Robbery		Fraud	
	Pre-MVRA	Post-MVRA	Pre-MVRA	Post-MVRA	Pre-MVRA	Post-MVRA
District of Columbia	1.50	16.34 ^a	1.06	NA	2.02 ^a	0.48 ^a
First	0.36 ^a	9.46 ^a	1.52	0.61	1.40	2.94 ^a
Second	0.52 ^a	1.68				
Third	0.53 ^a	2.44 ^a	1.65	2.30	1.27	2.16 ^a
Fourth	1.42	2.89 ^a	2.70 ^a	2.40 ^a	1.04	1.42
Fifth	1.34	1.59	3.93 ^a	3.65 ^a	1.76 ^a	1.78 ^a
Sixth	1.32	2.47 ^a	5.09 ^a	3.48 ^a	2.32 ^a	1.59
Seventh	1.10	2.01	5.73 ^a	3.01 ^a	1.63 ^a	2.65 ^a
Eighth	0.60	5.29 ^a	3.67 ^a	3.17 ^a	1.52 ^a	1.12
Ninth	0.73	1.48	1.13	1.86	1.23	0.96
Tenth	1.38	2.70 ^a	3.52 ^a	2.66 ^a	1.54 ^a	1.48
Eleventh			2.70 ^a	3.26 ^a	2.49 ^a	1.64 ^a
Offender characteristics						
Race						
Black	0.58 ^a	0.77	0.68 ^a	0.73 ^a	1.17 ^a	1.14
Hispanic	0.47 ^a	1.06	0.55 ^a	0.67	1.11	0.52 ^a

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Circuit	Larceny		Robbery		Fraud	
	Pre-MVRA	Post-MVRA	Pre-MVRA	Post-MVRA	Pre-MVRA	Post-MVRA
Other	0.91	0.96	0.37 ^a	1.76	1.19	1.06
Sex						
Female	1.50 ^a	0.89	0.83	0.84	1.12	1.58 ^a
Education						
High school	1.17	1.00	1.11	1.07	1.38 ^a	1.70 ^a
More than high school	1.49 ^a	0.99	1.49	0.70 ^a	1.29 ^a	1.36 ^a
Missing	2.67	0.69	3.75	0.62	1.14	0.22 ^a
Citizenship						
Not a citizen	0.36 ^a	0.76	0.64	2.12	0.64 ^a	0.40 ^a
Ability to pay						
Fine waived	1.76 ^a	2.53 ^a	0.99	0.80	2.24 ^a	1.87 ^a
One or more dependents	1.18	1.61 ^a	1.15	1.14	1.05	0.99
Sentence characteristics						
Prison (vs. probation)	3.58 ^a	2.72 ^a	NA	NA	7.50 ^a	8.77 ^a
Alternative sentence	1.48	0.94	NA	NA	1.15	2.68 ^a
Prison/alternative interaction	1.12	2.43	NA	NA	0.88	0.36 ^a
More than one count	1.52 ^a	2.40 ^a	1.4 ^a	1.90 ^a	0.98	0.96
Length of sentence	1.55 ^a	1.83 ^a	.99	1.02	1.67 ^a	1.59 ^a
Prison/sentence interaction	0.63 ^a	1.00	NA	NA	0.62 ^a	0.78 ^a

Note: N/A represents not applicable.

^aOdds ratios that are significant at the .05 level of statistical analysis.

^bThe referent categories to which the other districts were compared.

Source: GAO analysis of fiscal year 1997 USSC data.

Offenders Ordered to Pay Fines or Restitution for Each Circuit and District, Fiscal Year 1997

The following tables provide the numbers of larceny, robbery, drug and fraud offenders who were ordered to pay fines and restitution, in each of the judicial circuits and districts in fiscal year 1997. The numbers of offenders of certain types are quite small in many districts, so readers should be cautious about making percentage comparisons across small and large districts. Districts are arrayed within circuits in these tables, and it can be readily seen that substantial variation exists in the likelihood of being ordered to pay fines and restitution across the various districts within different circuits. Additional statistical work, not detailed here, revealed that for these specific offenses only between 13 percent and 37 percent of the variation in the likelihood of being ordered to pay fines or restitution resulted from variation across circuits, rather than across districts within circuits.

Table II.1: Number of Larceny Offenders Ordered to Pay Fines or Restitution by Circuit and Corresponding Districts in Fiscal Year 1997

Circuit	District	Total number of larceny offenders	Number ordered to pay fines	Number ordered to pay restitution
D.C.	District of Columbia	44	2	32
First	Maine	10	2	7
	Massachusetts	19	4	6
	New Hampshire	2	1	1
	Puerto Rico	4	1	1
	Rhode Island	5	2	4
Second	Connecticut	9	2	5
	New York East	56	10	16
	New York North	11	5	9
	New York South	51	13	22
	New York West	10	1	7
Third	Vermont	6	2	5
	Delaware	3	1	3
	New Jersey	54	18	23
	Pennsylvania East	55	20	28
	Pennsylvania Middle	11	1	9
Fourth	Pennsylvania West	6	1	2
	Virgin Islands	0	0	0
	Maryland	15	1	13
	North Carolina East	104	53	39
	North Carolina Middle	6	1	5
	North Carolina West	10	2	7
	South Carolina	24	2	18
	Virginia East	114	59	36
	Virginia West	24	7	20
	West Virginia North	4	0	3
Fifth	West Virginia South	11	3	8
	Louisiana East	20	3	6
	Louisiana Middle	10	2	7
	Louisiana West	59	43	17

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Circuit	District	Total number of larceny offenders	Number ordered to pay fines	Number ordered to pay restitution
	Mississippi North	18	2	14
	Mississippi South	9	0	7
	Texas East	14	2	14
	Texas North	52	13	36
	Texas South	19	4	12
	Texas West	98	62	25
Sixth	Kentucky East	12	3	7
	Kentucky West	168	115	34
	Michigan East	30	5	13
	Michigan West	23	12	13
	Ohio North	20	2	14
	Ohio South	19	6	14
	Tennessee East	12	1	9
	Tennessee Middle	17	6	13
	Tennessee West	5	0	5
Seventh	Illinois Central	4	1	3
	Illinois North	46	11	20
	Illinois South	2	1	1
	Indiana North	12	0	10
	Indiana South	10	3	7
	Wisconsin East	6	2	3
	Wisconsin West	12	0	12
Eighth	Arkansas East	8	2	2
	Arkansas West	5	1	3
	Iowa North	1	0	1
	Iowa South	4	0	4
	Minnesota	10	0	5
	Missouri East	16	4	5
	Missouri West	10	1	6
	Nebraska	8	3	2
	North Dakota	7	2	4
	South Dakota	24	11	23
Ninth	Alaska	5	3	4
	Arizona	18	3	9
	California Central	59	12	19
	California East	41	16	14
	California North	24	7	13
	California South	28	2	6
	Guam	6	1	1
	Hawaii	43	18	19
	Idaho	8	1	8
	Montana	25	0	24
	Nevada	7	3	5
	North Mariana Island	0	0	0
	Oregon	15	2	9
	Washington East	4	1	4
	Washington West	39	20	12
Tenth	Colorado	34	13	20
	Kansas	16	7	5
	New Mexico	5	0	5

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Offenders Ordered to Pay Fines or Restitution for Each Circuit and District, Fiscal Year 1997

Circuit	District	Total number of larceny offenders	Number ordered to pay fines	Number ordered to pay restitution
	Oklahoma East	2	0	1
	Oklahoma North	10	6	7
	Oklahoma West	16	10	4
	Utah	20	6	15
	Wyoming	7	2	5
Eleventh	Alabama Middle	27	14	9
	Alabama North	39	13	24
	Alabama South	6	0	5
	Florida Middle	27	3	13
	Florida North	20	3	13
	Florida South	58	10	21
	Georgia Middle	80	67	11
	Georgia North	45	21	18
	Georgia South	51	38	10

Source: GAO analysis of fiscal year 1997 USSC data.

Table II.2: Number of Robbery Offenders Ordered to Pay Fines or Restitution by Circuit and Corresponding Districts in Fiscal Year 1997

Circuit	District	Total number of robbery offenders	Number ordered to pay fines	Number ordered to pay restitution
D.C.	District of Columbia	12	0	2
First	Maine	5	0	5
	Massachusetts	11	2	2
	New Hampshire	7	0	4
	Puerto Rico	11	0	5
	Rhode Island	1	1	1
Second	Connecticut	9	0	5
	New York East	42	1	7
	New York North	4	0	4
	New York South	30	1	12
	New York West	16	1	13
	Vermont	0	0	0
Third	Delaware	8	0	5
	New Jersey	32	4	16
	Pennsylvania East	49	8	32
	Pennsylvania Middle	11	1	7
	Pennsylvania West	8	0	3
	Virgin Islands	1	0	0
Fourth	Maryland	40	0	14
	North Carolina East	25	9	18
	North Carolina Middle	39	2	32
	North Carolina West	32	1	23
	South Carolina	34	0	20
	Virginia East	6	0	5
	Virginia West	9	4	7
	West Virginia North	2	0	2
	West Virginia South	0	0	0
Fifth	Louisiana East	8	0	5
	Louisiana Middle	3	0	2

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Offenders Ordered to Pay Fines or Restitution for Each Circuit and District, Fiscal Year 1997

Circuit	District	Total number of robbery offenders	Number ordered to pay fines	Number ordered to pay restitution
	Louisiana West	4	0	1
	Mississippi North	6	1	4
	Mississippi South	10	5	6
	Texas East	23	2	18
	Texas North	49	0	38
	Texas South	34	6	30
	Texas West	32	5	20
Sixth	Kentucky East	11	0	9
	Kentucky West	21	0	16
	Michigan East	39	0	25
	Michigan West	11	6	6
	Ohio North	42	0	35
	Ohio South	8	0	8
	Tennessee East	20	1	17
	Tennessee Middle	13	0	8
	Tennessee West	19	0	15
Seventh	Illinois Central	8	0	7
	Illinois North	60	10	44
	Illinois South	5	3	4
	Indiana North	15	2	11
	Indiana South	11	6	4
	Wisconsin East	14	5	11
	Wisconsin West	4	0	4
Eighth	Arkansas East	18	0	8
	Arkansas West	10	1	9
	Iowa North	1	0	1
	Iowa South	8	1	6
	Minnesota	29	0	22
	Missouri East	22	0	13
	Missouri West	10	0	9
	Nebraska	9	0	7
	North Dakota	0	0	0
	South Dakota	1	0	1
Ninth	Alaska	9	2	6
	Arizona	40	6	24
	California Central	185	4	68
	California East	40	0	27
	California North	53	14	36
	California South	61	1	26
	Guam	0	0	0
	Hawaii	19	0	14
	Idaho	1	0	1
	Montana	3	0	0
	Nevada	45	10	28
	North Mariana Island	0	0	0
	Oregon	58	0	44
	Washington East	3	0	1
	Washington West	21	0	14
Tenth	Colorado	17	0	9
	Kansas	28	0	22

Appendix II
Offenders Ordered to Pay Fines or Restitution for Each Circuit and District, Fiscal Year 1997

Circuit	District	Total number of robbery offenders	Number ordered to pay fines	Number ordered to pay restitution
	New Mexico	33	0	24
	Oklahoma East	2	0	1
	Oklahoma North	10	2	8
	Oklahoma West	3	2	1
	Utah	20	2	12
	Wyoming	5	0	4
Eleventh	Alabama Middle	13	0	10
	Alabama North	14	4	11
	Alabama South	22	0	15
	Florida Middle	79	1	50
	Florida North	21	3	14
	Florida South	59	0	37
	Georgia Middle	12	0	10
	Georgia North	45	13	37
	Georgia South	12	1	7

Source: GAO analysis of fiscal year 1997 USSC data.

Table II.3: Number of Drug Offenders Ordered to Pay Fines or Restitution by Circuit and Corresponding Districts in Fiscal Year 1997

Circuit	District	Total number of drug offenders	Number ordered to pay fines	Number ordered to pay restitution
D.C.	District of Columbia	149	5	1
First	Maine	67	8	5
	Massachusetts	146	10	1
	New Hampshire	91	5	0
	Puerto Rico	197	4	0
	Rhode Island	31	9	0
Second	Connecticut	82	6	1
	New York East	414	16	2
	New York North	190	5	2
	New York South	402	32	2
	New York West	136	33	0
	Vermont	46	1	0
Third	Delaware	27	5	0
	New Jersey	188	103	1
	Pennsylvania East	208	78	1
	Pennsylvania Middle	105	68	0
	Pennsylvania West	86	5	0
	Virgin Islands	35	11	0
Fourth	Maryland	106	6	2
	North Carolina East	220	63	3
	North Carolina Middle	138	6	0
	North Carolina West	250	63	1
	South Carolina	412	4	1
	Virginia East	444	16	3
	Virginia West	222	89	1
	West Virginia North	76	12	1
	West Virginia South	102	39	1
Fifth	Louisiana East	132	32	1

Appendix II
Offenders Ordered to Pay Fines or Restitution for Each Circuit and District, Fiscal Year 1997

Circuit	District	Total number of drug offenders	Number ordered to pay fines	Number ordered to pay restitution
	Louisiana Middle	10	2	0
	Louisiana West	66	3	1
	Mississippi North	77	30	1
	Mississippi South	69	50	2
	Texas East	220	21	3
	Texas North	285	30	0
	Texas South	1121	242	1
	Texas West	857	208	4
Sixth	Kentucky East	157	14	2
	Kentucky West	74	4	0
	Michigan East	304	50	2
	Michigan West	86	63	1
	Ohio North	152	32	2
	Ohio South	126	31	0
	Tennessee East	140	9	1
	Tennessee Middle	66	2	3
	Tennessee West	112	8	0
Seventh	Illinois Central	139	27	6
	Illinois North	87	53	6
	Illinois South	163	150	1
	Indiana North	23	7	0
	Indiana South	71	50	0
	Wisconsin East	89	69	1
	Wisconsin West	30	0	1
Eighth	Arkansas East	143	5	1
	Arkansas West	35	22	0
	Iowa North	105	9	22
	Iowa South	113	2	0
	Minnesota	155	7	1
	Missouri East	181	23	1
	Missouri West	256	30	0
	Nebraska	123	6	0
	North Dakota	27	1	7
	South Dakota	50	22	1
Ninth	Alaska	30	1	1
	Arizona	560	38	1
	California Central	213	9	1
	California East	183	13	4
	California North	110	30	1
	California South	419	4	1
	Guam	25	4	0
	Hawaii	86	16	2
	Idaho	22	17	0
	Montana	85	4	0
	Nevada	60	31	0
	North Mariana Island	5	2	0
	Oregon	129	7	1
	Washington East	88	9	12
	Washington West	114	5	2
Tenth	Colorado	181	4	0

Appendix II
Offenders Ordered to Pay Fines or Restitution for Each Circuit and District, Fiscal Year 1997

Circuit	District	Total number of drug offenders	Number ordered to pay fines	Number ordered to pay restitution
	Kansas	84	5	1
	New Mexico	343	8	0
	Oklahoma East	19	1	0
	Oklahoma North	25	15	0
	Oklahoma West	87	7	0
	Utah	65	36	0
	Wyoming	53	12	1
Eleventh	Alabama Middle	108	3	0
	Alabama North	189	115	0
	Alabama South	214	5	1
	Florida Middle	509	13	3
	Florida North	192	28	3
	Florida South	557	47	2
	Georgia Middle	121	26	1
	Georgia North	223	36	3
	Georgia South	104	13	0

Source: GAO analysis of fiscal year 1997 USSC data.

Table II.4: Number of Fraud Offenders Ordered to Pay Fines or Restitution by Circuit and Corresponding Districts in Fiscal Year 1997

Circuit	District	Total number of fraud offenders	Number ordered to pay fines	Number ordered to pay restitution
D.C.	District of Columbia	129	16	70
First	Maine	17	5	10
	Massachusetts	89	25	50
	New Hampshire	21	3	8
	Puerto Rico	31	6	19
	Rhode Island	20	1	18
Second	Connecticut	51	10	32
	New York East	266	57	97
	New York North	44	6	20
	New York South	262	48	134
	New York West	108	8	84
	Vermont	22	3	18
Third	Delaware	25	12	17
	New Jersey	142	34	87
	Pennsylvania East	225	65	154
	Pennsylvania Middle	57	9	41
	Pennsylvania West	62	4	33
	Virgin Islands	11	2	3
Fourth	Maryland	79	7	42
	North Carolina East	53	11	40
	North Carolina Middle	31	3	28
	North Carolina West	71	3	43
	South Carolina	202	14	94
	Virginia East	165	21	114
	Virginia West	66	37	27
	West Virginia North	12	0	7
	West Virginia South	35	7	34

Appendix II
Offenders Ordered to Pay Fines or Restitution for Each Circuit and District, Fiscal Year 1997

Circuit	District	Total number of fraud offenders	Number ordered to pay fines	Number ordered to pay restitution	
Fifth	Louisiana East	58	10	33	
	Louisiana Middle	35	5	28	
	Louisiana West	47	19	40	
	Mississippi North	22	4	18	
	Mississippi South	26	6	18	
	Texas East	61	16	49	
	Texas North	207	46	143	
	Texas South	144	25	99	
	Texas West	285	30	98	
	Sixth	Kentucky East	46	5	35
Kentucky West		37	6	32	
Michigan East		145	23	99	
Michigan West		69	27	50	
Ohio North		159	25	105	
Ohio South		67	10	46	
Tennessee East		30	2	27	
Tennessee Middle		23	4	18	
Tennessee West		63	10	49	
Seventh	Illinois Central	24	5	18	
	Illinois North	195	42	122	
	Illinois South	17	5	13	
	Indiana North	50	8	38	
	Indiana South	37	5	29	
	Wisconsin East	48	12	35	
	Wisconsin West	20	2	16	
Eighth	Arkansas East	44	7	24	
	Arkansas West	20	6	17	
	Iowa North	17	0	13	
	Iowa South	13	0	12	
	Minnesota	64	11	38	
	Missouri East	89	10	42	
	Missouri West	93	5	70	
	Nebraska	27	0	22	
	North Dakota	14	4	10	
	South Dakota	23	11	16	
	Ninth	Alaska	11	1	8
		Arizona	93	10	56
California Central		338	58	145	
California East		83	10	58	
California North		100	19	74	
California South		116	19	40	
Guam		7	0	5	
Hawaii		25	4	19	
Idaho		11	3	9	
Montana		38	6	25	
Nevada		134	24	107	
North Mariana Island		1	0	1	
Oregon		34	3	22	
Washington East		8	1	4	
Washington West	94	13	73		

Appendix II
Offenders Ordered to Pay Fines or Restitution for Each Circuit and District, Fiscal Year 1997

Circuit	District	Total number of fraud offenders	Number ordered to pay fines	Number ordered to pay restitution
Tenth	Colorado	69	7	39
	Kansas	52	15	33
	New Mexico	13	0	7
	Oklahoma East	8	0	5
	Oklahoma North	48	10	39
	Oklahoma West	47	4	34
	Utah	33	8	18
	Wyoming	24	3	16
	Eleventh	Alabama Middle	25	0
Alabama North		84	21	58
Alabama South		42	4	38
Florida Middle		228	23	162
Florida North		29	8	23
Florida South		242	29	174
Georgia Middle		22	5	8
Georgia North		155	25	124
Georgia South		27	8	17

Source: GAO analysis of fiscal year 1997 USSC data.

Comments From the United States Sentencing Commission

UNITED STATES SENTENCING COMMISSION
ONE COLUMBUS CIRCLE, NE
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WASHINGTON, DC 20002-8002
(202) 502-4500
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April 17, 1999

Mr. Richard M. Stana
Associate Director, Administration of Justice Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Stana:

As you requested, this letter is to provide commentary from the United States Sentencing Commission staff regarding your draft report entitled FEDERAL COURTS: Differences Exist in Ordering Fines and Restitution. We appreciate the opportunity to provide our insights and commentary and would welcome the opportunity to discuss your report. Overall, we have some concern that the scope and conclusions of the report rely perhaps too heavily on the limited information that the Commission collects on fines and restitution. More specifically, staff have reviewed the report and offer these additional comments:

1. The Commission implemented the Mandatory Victims Restitution Act (Title II of Public Law 104-132) through amendment to §5E1.1, the Restitution guideline. This amendment [see Appendix C, amendment 571] was effective November 1, 1997, and included in the 1998 edition of the Federal Sentencing Guidelines Manual.
2. The report concludes that considerable inter-circuit and inter-district disparity exists with regard to the imposition of fines and restitution. In addition, the report concludes that implementation of the Mandatory Victims Restitution Act (MVRA) has not been uniform

Appendix III
Comments From the United States Sentencing Commission

across the twelve federal judicial circuits. The Office of Education and Sentencing Practices at the Commission has received several requests for more information and training on the correct application of the MVRA. In fact, our staff has worked with staff at the Administrative Office of the United States Courts to develop training materials on MVRA. As well, our staff is preparing to film the restitution segment of a national training seminar in May, 1999. This film will be disseminated via broadcast on the Federal Judicial Television Network to all United States Probation Offices. Additionally, our staff is in the process of working with the Federal Judicial Center to include training on MVRA for Mega Workshops for district court judges during the summer, 1999.

3. The report utilizes only one year (i.e., FY 1997) of the United States Sentencing Commission's data for the analysis. While FY 1997 is the only year of data currently available to investigate the implementation of the MVRA, there are previous years' datasets available to corroborate the more general conclusions drawn from the report regarding the disparate imposition and use of fines and restitution across judicial circuits and districts. The rates of imposition of fines and restitution by district are particularly subject to idiosyncratic variations in case mix and characteristics in any given year. These idiosyncracies might explain some of the variation in application found in the analysis. It would be particularly beneficial to replicate the 1997 MVRA analyses using the FY 1998 data when it is made available in the next few months.
4. The report includes very limited information regarding the scope and conclusions drawn from your qualitative analysis of the seven districts-- Eastern District of Pennsylvania, District of New Jersey, the Southern District of New York, the Eastern District of New York, the Northern District of California, the Central District of California, and the Southern District of California. A summation of your findings for each district and by each category of participant might be insightful to more fully understand the differential use of fines and restitution generally and the MVRA specifically. For instance, what processes and court culture promote the use of fines and restitution and the full implementation of MVRA?

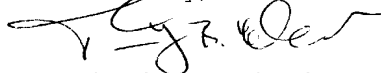
Appendix III
Comments From the United States Sentencing Commission

5. On page 28 the report cites data from the Northern and Central Districts of California that indicate restitution was ordered in all cases where there was monetary loss. While this conclusion is somewhat at odds with the Commission data, please note that the Commission only has available the Judgement and Commitment Order to extract sentencing (e.g., fines and restitution) information. Documents or information regarding pre-sentencing decisions and outcomes are unavailable to our agency. We have no straightforward way of capturing restitution paid prior to sentencing or restitution not paid due to law enforcement recovery of property taken.
6. Footnote 6 in Appendix I to the report, Statistical Analysis of Offenders Ordered to Pay Fines and Restitution, Fiscal Year 1997, states that one shortcoming of the USSC data is that it includes no information on offender income. In the past the Commission has pursued data collection on offender income through the creation of several coding variables (i.e., offender net worth, offender occupation). The latest attempt to document offender income was the creation of three related variables- (a.) offender income (i.e., dollar amount), (b.) frequency of offender income (i.e., monthly, yearly), and (c.) offender annual income. We found that this information was often missing or indeterminable from the documents collected at the Commission and that our coding efforts for these three variables was often unreliable.
7. In Appendix I to the report, Statistical Analysis of Offenders Ordered to Pay Fines and Restitution, Fiscal Year 1997, Table 1.3 does not have the Eastern District of Pennsylvania included. Since this is a table of the percentage of fines and restitution ordered by judicial district, we assume that this omission is an error.

Appendix III
Comments From the United States Sentencing Commission

I hope that our comments outlined above are helpful. If you have any questions regarding our commentary or if we may be of additional assistance, please contact me at (202) 502-4500 or Richard McNeil, Director of the Office of Monitoring, at (202) 502-4584.

Sincerely,



Timothy B. McGrath
Interim Staff Director
United States Sentencing Commission

Comments From the Department of Justice



U. S. Department of Justice

Washington, DC 20530

April 20, 1999

Richard M. Stana
Associate Director
Administration of Justice Issues
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Stana:

On April 2, 1998 you provided the Department of Justice copies of a General Accounting Office (GAO) draft report entitled "FEDERAL COURTS: Differences Exist in Ordering Fines and Restitution." The draft was reviewed by representatives of the Office of Justice Programs and the Executive Office for U.S. Attorneys (EOUSA). The Department generally agrees with the findings contained in the GAO draft and would like to advise the GAO of the steps that have been taken to help ensure that the Mandatory Victims Restitution Act (MVRA) is implemented.

After the MVRA was signed into law, a copy of the legislation and the President's statement at the time he signed the legislation was sent to all United States Attorneys. On June 3, 1996, the Acting Assistant Attorney General of the Criminal Division issued a memorandum to all federal prosecutors providing guidance regarding categories of ex post facto issues for the provisions of the MVRA. Further, in a July 24, 1996, memorandum to all Department attorneys and Victim-Witness coordinators, the Attorney General promulgated guidelines to comply with Section 209 of the Act. Section 209 mandates that when negotiating plea agreements, prosecutors must consider requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the count to which the defendant actually pleads. Subsequently the EOUSA issued a memorandum to all United States Attorneys' offices outlining the different types of restitution under the MVRA and new procedures for the imposition of restitution. These guidelines have been incorporated into the United States Attorneys' manual. In addition, the January 1999 edition of the United States Attorney Bulletin devoted to victims rights includes an article about the MVRA.

The requirements of the MVRA have been an important part of the United States Attorneys' training efforts. They have been included in substantive criminal law and financial litigation courses as appropriate. New prosecutors attending Criminal Trial Advocacy or Criminal Federal Practice courses are routinely instructed about the mandatory restitution provisions of the MVRA. Since the enactment of the law, EOUSA attorneys also have conducted in-house training courses on the MVRA in 25 United States Attorneys' offices. In most districts these

Appendix IV
Comments From the Department of Justice

courses were attended by prosecutors and probation officers. The MVRA training outline developed for this purpose is available to all United States Attorneys' offices through EOUSA's intranet.

Finally, the EOUSA has developed and distributed a model Memorandum of Understanding (MOU) for the collection and processing of criminal fines, restitution, special assessments, and pretrial diversion orders that sets forth the responsibilities of the United States Attorney's office, Probation Office, and Clerk's Office. While each district is encouraged to individualize the MOU, sample language is provided that outlines responsibilities under the MVRA, in particular with respect to identifying victims and their losses.

EOUSA and the United States Attorneys recognize that the imposition of restitution is critical to the Department's law enforcement efforts. They are committed to helping to ensure that victims of crime are fully compensated for their losses. While the EOUSA has taken a number of steps to ensure that the MVRA is implemented in the United States Attorneys offices, it recognizes that more remains to be done to increase the number of cases in which restitution is imposed. The EOUSA will continue to educate the districts concerning this issue and remind them of the importance of seeking restitution in all appropriate cases.

I hope the comments will be beneficial in completing the final report. I am providing technical comments under separate cover. If you have any questions concerning the Department's comments, you may contact me on (202) 514-0469.

Sincerely,



Vickie L. Sloan
Director, Audit Liaison Office
Justice Management Division

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