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## TAKE SUBWAY SCOFFLAWS OUT OF THE CRIMINAL COURTS

by Ross Sandler, Steve Reiss and David Schoenbrod

Fear and intimidation are a large part of the subway crime problem. Transit riders frequently encounter threatening situations which may be minor or avoidable on the streets, but create a uniquely frightening situation for the passenger who feels trapped in a subway car or station. Minor offenses, which constitute mostly offenses on the system—graffiti, vandalism, and farebeating—reinforce the sense of lawlessness and intimidation. These minor offenses often are visible to other passengers and convey the message that the transit system cannot protect itself or its passengers.

In December, 1983, both Mayor Edward I. Koch and the Metropolitan Transportation Authority agreed to seek state legislation to allow farebeating and other minor subway offenses to be adjudicated in a civil forum rather than in Criminal Court.

Few persons summoned to Criminal Court are actually fined or imprisoned. In 1983, 86% of those summoned never showed up. Criminal Court judges, who are understandably reluctant to punish a defendant

who shows up often impose no fine at all, and the average fine is \$8. As one experienced Criminal Court judge reported, "The process is the only punishment because the defendants often have to wait in long lines and spend hours in the courtroom, and these are the few who show up."

The City has already moved environmental, sanitation, motor vehicle and taxi enforcement from the Criminal Court to civil tribunals. In 1979, along with other health and environmental violations, the City switched the minor subway offenses concerning littering, smoking and Health Code violations on subways to the New York City Environmental Control Board. The Board's record is far better than the criminal courts. It doubled the defendant response rate, more than doubled the average fine, and raised the average revenue per summons issued more than eight times. The Board is ap-

proaching a 32% response rate, nearly three times the response rate that the Criminal Court achieved.

Still, a response rate of less than one third is quite low in absolute terms. The primary reason for the low response rate is the difficulty in obtaining good identification at the time the police issue the summons. Perhaps less than half of those summoned give accurate names and addresses. When Mayor Koch attempted through intensive police work to locate subway scofflaws in 1982, the police were unable to locate 56% of the scofflaws selected. The Board hired collection agencies who reported similar results.

There are other methods for handling minor subway crime, they include the following:

Have police arrest farebeaters and take them to court rather than serve summonses. This approach removes police from the subway where their presence is far more necessary to

TABLE I  
NEW YORK CITY CRIMINAL COURT DISPOSITION OF  
TRANSIT AUTHORITY SUMMONS

Year	Case Filed	As % Of Total Fines			\$/Case Filed	\$/Case Adjudicated
		Defaults	Filings	Imposed		
1982	377,691	342,241	90.6%	\$282,247	\$.74	\$7.96
1981	197,815	167,723	84.8%	\$192,423	\$.97	\$6.39
1980	115,194	95,065	82.5%	\$114,408	\$.99	\$5.68

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maintain order and protect against more significant crimes.

Have police chase down no-shows with arrest warrants. With 300,000 summons a year, the police force could not handle the assignment, nor would anyone rate this activity as important as other police responsibilities more directly related to public safety.

Have police or transit personnel collect a fine from the offender on the spot. Again, police would be taken off patrol, significant management problems would arise concerning custody of money and supervision of police, offenders without money or denying guilt would have to be released anyway, and questions of due process of law and defendant's rights would undermine the apparent simplicity of the concept.

Technological and architectural solutions can make farebeating more difficult. Most farebeaters gain free access to the subways through the slam gates. The introduction of automatic fare collection into the subway system could lessen or eliminate the current need for slam gates. Senior citizens, students, police officials, and transit employees could receive electronic passes to be used in the same turnstiles as all passengers. Slam gates could then be locked for most of the day and opened only when necessary to allow peak hour egress from the most congested stations. These technological solutions

bear further study. Meanwhile, the legislature should allow the New York Transit Authority to set up a civil tribunal to deal with the problem.

In a civil adjudication, a no-show

does not halt the process. The civil tribunal instead can enter judgment against the defendant immediately, levy a fine and assign it to collection attorneys and agencies. ■

**TABLE II**  
**TRANSIT VIOLATIONS: COMPARATIVE DISPOSITIONS**

	<i>Criminal Court</i> 7/79 - 12/79	<i>Environmental Control Board</i> 7/82 - 12/82	<i>Improvement</i>
Summons Issued			
Littering	3,724	6,841	—
Smoking	27,830	44,136	—
Response Rate			
Littering	12.7%	25.8%*	118%
Smoking	15.3%	25.3%	113%
Total Fines			
Littering	\$ 3,464**	\$ 59,803***	—
Smoking	\$39,829**	\$406,637***	—
Average Fine			
Littering	\$10.28	\$35.05	241%
Smoking	\$ 9.87	\$37.19	277%
Average Revenue Per Summons Issued			
Littering	\$0.93**	\$ 8.74	840%
Smoking	\$1.43**	\$ 9.21	544%
% Dismissals Among Dispositions			
Littering	29%	3%	—
Smoking	5%	2%	—

\*Figure includes payments made as a result of ECB dunning efforts. Initial default rate is higher.

\*\*Figure represents amount assessed. Figures for amount collected are not available.

\*\*\*Actually collected.

## NEW DIRECTIONS

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another Call initiative, the use of checkpoints—critics call them roadblocks—to deter drunk driving.

About once a month, late at night, Call and several of his officers establish the checkpoints along county roads. Every driver is stopped and checked for signs of intoxication, though only a few actually are asked to get out of their cars. The idea is not to make more arrests, but to deter drivers from drinking excessively in the first place.

Call estimates that the checkpoints have cut the number of alcohol related accidents in the county by one third. But critics of the program say the reduction may be due to other

factors, such as reduced automobile usage and a change in societal attitudes towards drunk driving.

"That's probably the one program that it's most hard to see whether or not it's effective," says McAllister. "But I think people like it . . . because it's visible, and whether or not it's effective, people get the feeling: 'Well, here's somebody who's trying to do something about the problem.'"

The checkpoints also have been criticized by civil libertarians who say they infringe on the constitutional protection against unreasonable search and seizure. Call responds that the checkpoints delay motorists for less than 30 seconds which is "not unreasonable." He says it's up to the courts to decide if the check-

points are constitutional. "The courts will never have that option if we decide on our own: 'Oh, well, it's unconstitutional so we aren't going to try it.'"

Giving things a try has been the hallmark of W. Douglas Call's tenure as Genesee County Sheriff. Shortly after his re-election last November, Call was pondering new initiatives: Perhaps the county's crime prevention program should include a telephone and Citizens Band radio alert system to help catch fleeing felons? Maybe community service can be used as an alternative to bail?

"I would like to think," says Call, "that . . . in Genesee County we are in the beginning of doing things differently in the criminal justice sphere." ■