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Of Driver's Licenses and Debtor's Prison

John B. Mitchell¹ and Kelly Kunsch²

INTRODUCTION

There were jokes popular in the 1950s called “moron” jokes. They did not target any race, nationality, or profession (like lawyers)—they just targeted morons. Question: “Why did the moron jump off the Empire State Building?” Answer: “He wanted to make a hit on Broadway.” Typical moron joke—stupid. But there was one that seemed to capture a bit of insight into the human character. Question: “Why did the moron keep hitting his head against the wall?” Answer: “Because it felt so good when he stopped.”

Apparently those who legislate and enforce the laws in lower courts, dealing with traffic misdemeanors, have never heard the joke: they keep hitting their heads against the proverbial wall, but they do not stop. Unfortunately, metaphorically, this wall is made up of low-income people whose driver's licenses are revoked because they cannot afford to pay traffic fines. Consequently, this results in the criminalization of low-income people for driving without being able to pay one of the associated costs of driving (i.e., traffic fines), and the conversion of the driver's license into a form of collateral for that debt.³

In our society, the driver's license is a precious commodity, and if the government threatens to take our's away, it is certain to capture our attention. Therefore, it is hardly surprising that courts and legislatures throughout the country have chosen to use the threat of imposing an administrative suspension of an individual's driver's license as a means of coercing the individual to pay any unpaid fines for traffic tickets. While this approach to debt collections might have made sense at its inception, currently, this approach is impractical; the entire enterprise of using driver's

license suspensions to collect fines from low-income individuals is seriously misguided. The story that follows is not an uncommon scenario; it illustrates what we refer to throughout this article as “the cycle.”

A NOT SO UNUSUAL STORY

In a court whose jurisdiction included misdemeanor traffic offenses, Sally Jones (Sally) is found guilty of her third conviction for driving with a revoked driver’s license,⁴ and is sent to jail for several months.⁵ Sally’s conviction appears appropriate, one might think; she obviously does not get the point, and it is time for some “specific deterrence”⁶ in the form of serious jail time to drive the point home to her. Often, however, when one looks more closely, the story may be very different than the simple tale of crime and punishment imagined.

Sally⁷ once had a driver’s license, which was subsequently revoked. But here the story deviates from expectations. Sally is a single mother who lives with her sister, who is also a single mother. Her sister works during the day and Sally watches the children. Sally works at night and her sister watches the children. They live outside the city, because housing in the city is unaffordable. Sally drives to work because the available public transportation is neither sufficiently direct nor frequent enough (since she works the night shift) to offer even a remotely rational transportation option.

Sally’s driver’s license was not originally revoked for driving while intoxicated, vehicular homicide, reckless driving, excessive moving violations, or any other offense related to the safe handling of a motor vehicle. Rather, she did not pay a fine⁸ imposed for running a stop sign and for driving a vehicle with expired tabs. Sally received the ticket, but threw it in her glove compartment and forgot about it;⁹ she did not look carefully at the ticket and thought that she would hear from the court. Meanwhile, Sally’s ticket debt was compounding. Immediately after the infraction was issued, “statutory fees” were added (in Washington, 120 percent of the cost

of the assessed fine for the infraction).¹⁰ When Sally did not respond, a default fee was added.¹¹ Shortly thereafter, Sally's case was referred to a collection agency, which then added another 30 percent collection fee on the top¹² and 12 percent interest on the total unpaid debt.

Meanwhile, the Department of Licensing (DOL) learned of the large unpaid fines and administratively suspended Sally's driver's license.¹³ Sally, however, did not receive notice of the suspension.¹⁴ She had moved several times and at some point forgot to notify the DOL of her new address. Even if Sally had notified the DOL of her change of address, it would not be all that uncommon for the DOL database to fail to accurately note the changes and thereby send the notice to a wrong or non-existent address.¹⁵

Then one evening on the way home from work, Sally was pulled over because her left taillight was out. After a computer check by the police officer revealed a suspension on Sally's driver's license, she was arrested and charged with a misdemeanor, driving with a suspended driver's license in the third degree (hereinafter DWLS3).¹⁶

When Sally went to court for her first appearance, there were no public defenders present.¹⁷ Sally talked to the prosecutor, waived her right to counsel, and made some deal, pleading guilty to DWLS3. Consequently, another set of large fines now were added to what she owed.¹⁸ If Sally could have written a check for what was then well over a thousand dollars in fines, she would have her driver's license back. But Sally did not have a check or even a checking account. More importantly, she did not have the money to spend on something that would not bring in real goods or services, and would deplete her entire share of more than a month of food, shelter and clothing¹⁹ for her and her family.²⁰ So, Sally decided that she would not have a driver's license.²¹ Neither she nor her sister wanted to raise their children on welfare. She could not pay the fine,²² but wanted to work. Realistically, that meant driving.

Although Sally was well aware that she was driving with a revoked driver's license, she kept driving; she needed to get back and forth to her minimum wage employment and to take her children and her sister's children to doctors and daycare. Sally's chances of getting stopped by law enforcement were statistically higher than most of us, since she was driving a "junkier" car, replete with a variety of mechanical violations, including a cracked windshield and a broken taillight. Each time Sally was stopped by a police officer and issued a ticket, the result was another set of huge fines and assessed court costs. Currently, Sally owed thousands of dollars to the court. Unfortunately, Sally's low paying job was not sufficient to pay the full amount of the fines. And again, living in an area lacking effective mass transportation to her work,²³ how will she get to work? Obviously the cycle continued, eventually ending in significant jail time for Sally. After serving the sentence, she still did not have a driver's license, had incurred even more fines, and had lost her job and, subsequently, the basic apartment where she and her sister were living.

THE PREDICAMENT

While perhaps more sympathetic than some, Sally's story is little different than many others. For a defendant who is impoverished, her failure to pay what could be thousands of dollars of fines is often the result of rational economic prioritizing. In the State of Washington, someone like Sally may be able to avoid this cycle by entering into a variety of relicensing programs headed by prosecutors, the courts, or independent community agencies.²⁴ Even so, the questions remain: Why must she go through this very difficult and time consuming hurdle to regain her driver's license? Why was her driver's license revoked in the first place for not paying a fine?

Of course, our society does not want people driving without valid driver's licenses. However, when the cycle begins, not because the defendant has proved to be an unsafe driver but with a driver's license

revocation because she cannot pay her fines, then we are really using the criminal law to punish poverty. The simple truth is that if many of us found ourselves facing the initial predicament of our defendant, Sally, we would take out our checkbook, put off buying that forty-two inch plasma television for a few months, write the check, and the problem would melt away. Thus, when you watch the story of someone like Sally, you cannot help but conjure up images of debtor's prisons from Dickens,²⁵ or Patrick O'Brien's tales of Captain Aubrey of the British Navy during the Napoleonic Wars.²⁶

If fifty or even one hundred people lost their driver's licenses because of their inability to pay, the practice would raise serious justice issues. In fact, we are talking about far greater numbers. For example, in the State of Washington, 186,500 driver's licenses are suspended each year.²⁷ Most of these suspensions are for nonpayment of fines, and frequently fall upon low-income minorities.²⁸ DWLS3 cases are estimated to constitute at least one-third of the calendars of the courts of limited jurisdiction in the State of Washington.²⁹ This is a very serious issue.

THE WAY WE SEE IT

In this article, we use the operation of the courts in the State of Washington (Washington) charged with adjudicating misdemeanors, the courts of limited jurisdiction,³⁰ as an example for our analysis. Our reason for choosing Washington is simple: we live here and thus have access to court personnel and records, as well as prosecutors, public defenders, agency personnel, and such. In doing so, we have found nothing in our research to give us reason to believe that Washington courts are atypical among the large number of states that revoke driver's licenses for nonpayment of fines. If anything, our research indicates that Washington courts are at the forefront in developing programs which help people get back their driver's licenses once revoked for non-payment of fines. However, in spite of relicensing programs and the recent alterations to

existing law (*Redmond v. Moore*³¹ and RCW 46.63.110³²), Washington has not effectively rectified the criminalization of low-income people who have had their driver's licenses revoked. We conclude that it is unacceptable for society to punish a person for his/her poverty, and, therefore, revocation a driver's license for nonpayment of fines should never be an option for any state.

In Section A, we will take an historical view of the use of prison to coerce payment of debt in civil and criminal cases, and the predictable failure of that system when used against indigents. In Section B, we look at data from the courts of limited jurisdiction in Washington and in the State of Florida as an example of the extent to which state governments utilize driving-related fines for revenue. In Section C, we will explore the rationales for licensing drivers, the lore and place of the automobile in American life, the use of fines as punishment for driving without a valid driver's license, and the predictably failed results of revoking driver's licenses to collect fines. In Section D, we will discuss various proposed solutions to the conundrum of fining the impoverished, explaining why none of these solutions are meaningful when dealing with a revoked license, and conclude with an explanation of why revocation of a driver's license should never be used as a way to collect monies due from fines and tickets.

A. Use of Imprisonment to Collect Civil Debt and Criminal Fines

We do not contend that the jails are currently overflowing with inmates whose licenses were revoked because they were too poor to pay traffic fines. Nevertheless, we believe that an extensive discussion of so-called "debtor's prison" is warranted for a number of reasons. First, there are people who serve months in jail for repeatedly driving after their license has been revoked for failure to pay traffic fines. Further, a review of the history of debtor's prison shows that the philosophy underlying the use of revocation of driver's licenses as a means of coercing payments is not the

sudden inspiration of some county auditor, but is deeply embedded in Western history. Finally, and most importantly, that history demonstrates the futility of using the coercive penalogical power of the state to collect debts and accumulate revenue.

1. The Long and Distinguished History of Debtor's Prison

Civil Debt

The use of imprisonment to collect debts by both the state and private individuals has a long pedigree, dating back 3,000 years.³³ In early Rome, debtors were given thirty days to pay their debts.³⁴ If a debtor failed to pay his debt, the creditor could place him under house arrest for another thirty days in hopes of shaking loose a few coins from the debtor, his family, or his friends. If funds did not materialize by the end of the second thirty-day period, the creditor could sell the debtor into slavery³⁵ to recoup his money.³⁶ Analogously, in some American colonies, indigent debtors could be sold into indentured servitude.³⁷

By the reign of Justinian, in the sixth century, public debtor's prisons replaced the earlier system of private capture, but the other aspects of private debt collection took a similar form.³⁸ Then, with the rise of feudalism, arrest for debt all but disappeared.³⁹ Feudal lords simply could not have their vassals, who were fodder in the Lord's army, unavailable for military service because they were languishing in some debtor's prison. However, as feudalism waned, imprisonment for debt returned with a fury, fueled by the Church, which characterized debt and insolvency as a sin.⁴⁰

In the thirteenth century in England, a series of Acts of Parliament⁴¹ solidified a system employing incarceration for debt collections which continued well into the twentieth century.

Under this system, arrest of the alleged debtor was accomplished via a series of writs. For example, the *Writ of Capias ad Respondendum* (alternatively, termed the process of a "Mesne"), obtained at the inception

of a suit,⁴² allowed arrest to prevent the debtor from fraudulently hiding assets or fleeing. The arrested debtor could obtain freedom by turning over the disputed property he was alleged to be concealing⁴³ and/or posting bail to assure he would not flee.⁴⁴ The *Writ of Capias ad Satisfaciendum*,⁴⁵ on the other hand, was meant to insure collection of the debt once the court determined the debt was valid. Thus, the debtor sat in prison until he, family, or friends came forth to pay.⁴⁶ It was not unheard of for low-income debtors to die in prison⁴⁷ when family and friends could not help.

Debtor's prison, and the accompanying legal writs of *Capias ad Respondendum* (Mesne) and *Capias ad Satisfaciendum*, came to America with the colonists.⁴⁸ Long after the ratification of our Constitution, there existed a federal debtor's prison.⁴⁹ In contrast to the separate English debtor's prisons, debtors in the United States were generally thrown into the same jails with criminals.⁵⁰ In fact, in 1830s Massachusetts, New York, Pennsylvania, and Maryland, "three to five times as many persons were imprisoned for debt as for crime."⁵¹

Lest you think all this was part of a long ago, more primitive time, the threat of jail as a means of encouraging payment for private debt in America coexisted with remote-controlled color TV's. While by the 1920s every state abolished imprisonment for debt⁵² by Constitution or statute,⁵³ well into the 1960s there existed a great variety of approaches for the use of Mesne in tort and fraud cases.⁵⁴ Thus, pleadings could be crafted to plead a contract claim (for which Mesne was not permitted) as fraud in the inducement (for which Mesne could be employed under law).⁵⁵ By such framing of the pleadings, creditor's counsel thus would raise the spectre of bodily arrest, thereby coercing the alleged debtor to settle⁵⁶ rather than face arrest and jail.⁵⁷

Criminal Fines

In 1910, 58 percent of prisoners incarcerated in jail⁵⁸ were there because, when sentenced to a choice of fine or of jail time—a sentencing process

commonly characterized as “thirty dollars or thirty days”⁵⁹—they could not pay the former. By 1956, the percentage had risen to 67.5 percent.⁶⁰ This use of jail as a means to extract a public fine from the defendant, her family, or friends was hardly anything new; like its civil counterpart, incarceration for non-payment of fines had a very ancient lineage.

In feudal England, prior to the time when a fully evolved notion of a public criminal law existed and was distinguished from civil law, one who had committed what we would now term a crime (e.g., an assault) could avoid blood feud (i.e., private revenge) by paying compensation to the injured party or family,⁶¹ a procedure analogous to some remedies for wrongs found in biblical Mosaic law.⁶² During the Anglo-Saxon rule of England, the public notion of crime began to evolve.⁶³ Initially, an assault in the presence of the feudal lord would require compensation not only to the victim, but also to the lord for the public offence. The violator was required to compensate the lord for any crime done on his domain, whether in his presence or not.⁶⁴

Following the Norman Conquest in 1066, William the Conqueror⁶⁵ recognized the economic potential of a public criminal law linked to raising revenue.⁶⁶ Under his reign, those found guilty “in the King’s mercy”⁶⁷ of any of a number of public crimes forfeited their liberty, but they could negotiate their freedom through payment of monies, or property, or both, to the King. This final settlement leading to the criminal’s release was termed the *Finalis Concordia*,⁶⁸ hence, the term “fine.” Thus, the initial use of imprisonment was not to punish, but to raise revenue.⁶⁹ It was not until 1383 that the phrase to “pay fine,” which was a punishment, first appeared in a statute instead of the phrase to “make fine,” which were negotiations.⁷⁰

Fast forward approximately six hundred years to American soil. The notion of fine still connoted punishment, but analogous to the time of William the Conqueror, jail was also used as a means of coercing its payment.⁷¹ Again, in 1956 approximately 67.5 percent of the inmates in jail⁷² were there because they could not pay their fines.⁷³

Under such a regime, a constitutional assault on the imprisonment of indigents for non-payment of debt was inevitable.⁷⁴ First, the Supreme Court found that equal protection was violated when an indigent defendant, who had served the statutory maximum jail term, was nevertheless kept in jail to “work off” his fine.⁷⁵ Next, sending an indigent to jail to “work off” a fine for an offense punishable by fine only was held, by the Supreme Court, to run afoul to equal protection.⁷⁶ Answering the criticism that indigents could never be punished for fine-only offenses,⁷⁷ the Court specifically noted a variety of strategies for imposing the punitive sting of a fine on an indigent defendant (e.g., deferred or installment payments; community service in lieu of fine).⁷⁸ Subsequently, due process was conjoined with equal protection⁷⁹ to reverse a probation revocation when the order of revocation was based upon the probationer’s failure to pay a fine which was a condition of probation.⁸⁰ The Supreme Court found that the lower trial court had erred when the judge failed to hold a hearing first to determine the defendant’s willingness and ability to pay. For example, if the probationer did not pay because he simply had insufficient financial means and was acting in good faith, revocation was constitutionally prohibited.⁸¹

Interestingly, the Supreme Court never dealt with the most common scenario under which most indigent defendant’s sit in jail (the situation we have referred to as “thirty dollars or thirty days”).⁸² The authors recognize that, analytically, the thirty days is an alternative punishment to the thirty dollars,⁸³ and believe that fines can be effective punishments.⁸⁴ If the choice was “thirty days or fifteen thousand dollars,” one might look at the constitutional dimensions of this issue differently. But spending a dollar in 1970, or five dollars and fourteen cents today,⁸⁵ cannot begin to compare to the deprivation, unpleasantness, fear, and danger from a day spent in a cage.⁸⁶ Given the alternative, the choice that any of us would make in this circumstance is clear: Where’s my ATM card?

Interestingly, without any explicit Supreme Court pronouncement, the thirty dollars or thirty days sentencing format disappeared from our criminal jurisprudence. It did not really expire under any noble constitutional banner (though courts may have seen the equal protection writing on the wall), but fell under the pennant of practical wisdom—this system simply served nobody's needs.⁸⁷ For, as in all the epochs in history when the impoverished have been jailed for their impoverishment, the practice has been counterproductive for both private and public actors.

The Failures of Imprisoning Low-income Individuals to Coerce Payment of Debts or Fines

The title of this subsection would understandably create reactions ranging from subtle observations concerning the inability to obtain “blood from a turnip” to more in-your-face criticisms like, “are you stupid; they don't have any money—that is why we call them indigents.” Strangely, this fairly obvious point has not always been apparent in the halls of history.

While there were periods in history when the indebted, his family, or his friends had to support the costs of the debtor's confinement to avoid his death,⁸⁸ it was much more common for the creditor to pay the costs of maintaining the debtor in prison.⁸⁹ Of course, the creditor's hope was to call the debtor's bluff, making him come forth with every asset he or his family could muster.⁹⁰ And, if we were talking about the gambling debts of the profligate son of a wealthy squire or merchant in some eighteenth century English village, such tactics may have well been successful. However, if the debtor was low-income, and his friends and family are poor, imprisoning the debtor was not likely to prove an effective debt collection strategy.

In the first place, the creditor had to financially maintain the debtor's prison stay. If the creditor stopped maintaining the debtor's prison stay, the common law generally required the debtor's release.⁹¹ While the debtor was in jail, he was unable to work to earn any money, and any employment

he did have was likely lost.⁹² After some period of time, depending on the type and amount of the debt (between one and nine months in jail), the debtor could take the poor “oath” establishing his indigence and be released.⁹³ Essentially, the creditor threw good money in after bad to feed and shelter the debtor in jail, and the debtor walked out of jail without paying a penny.

In the context of incarcerating debtors to induce payment of a fine, the historical results were just as counterproductive. Society paid the expense of incarceration, and the cost was not insubstantial.⁹⁴ On the other hand, the debtor could not earn money while in jail, he lost whatever job he had, was removed from family and other social support networks, and could have, as result of his short term confinement, transitioned from being a casual criminal to a confirmed offender.⁹⁵

In fact, only the Romans, who sold debtors into slavery, and the American colonists, who sold debtors as indentured servants, had a system for obtaining monies owed from those who possessed none. The Thirteenth Amendment to the United States Constitution offered a serious impediment to this strategy.⁹⁶ In spite of this, we still have not learned our lesson. As detailed in section C, subsection 4, *infra.*, by using revocation of driver’s licenses and the threat of jail to collect traffic fines, the lower trial courts are engaging in an endeavor as futile and contra-productive as its historical predecessors.

B. Revenue Gathering in The Courts of Limited Jurisdiction—Washington Returns to the Reign of William the Conqueror

Part of the problem in changing the system may be that traffic fines can be a lucrative source of government revenue,⁹⁷ but exactly how lucrative they are is impossible to determine. In the State of Washington, traffic fines are distributed according to statute and the base penalties for each infraction are established by court rule.⁹⁸ For example, as of August 2005, the base penalty for general parking violations was twenty-four dollars,⁹⁹

the base penalty for failure to respond to notice of infraction or failure to pay penalty was twenty-five dollars, and the base penalty for no valid driver's license was \$250.

Distribution of fine revenues in Washington is somewhat convoluted. After certain deductions, the base penalty revenue is divided between the state and the local jurisdiction (32 percent going to the state; 68 percent to the local jurisdiction).¹⁰⁰ Monies allocated to local jurisdictions are deposited into the jurisdiction's general fund, not the court system or law enforcement fund. The state's portion of revenues is deposited into its Public Safety and Education Account (PSEA). In addition to revenues from infraction-based penalties, various statutes allow for special assessments to be deposited into the PSEA as well. Some of these assessments are distributed, in part, to local jurisdictions.¹⁰¹ Calculating the total government revenue from traffic fines is virtually impossible because it requires reporting from all local jurisdictions (i.e., cities and counties) in the state.

Even so, in fiscal year 2004, the state government of Washington collected more than \$76 million in traffic fines and forfeitures. While Washington was not able to provide a specific value for suspended licenses, the State of Florida reported \$47,144,472 in revenues from individuals paying to reinstate their driver's licenses from a revocation or suspension in 2004.¹⁰² Although a state's fine revenue often does not even equal 1 percent of its total revenue, it is hardly an insignificant number.

Furthermore, fine revenue is often more significant at the local municipality level—particularly for more rural locations. For example, the City of Seattle's general revenue for "Fines & Forfeits" in 2004 was over \$18 million,¹⁰³ which was only a small percentage of its total general revenue of more than \$730 million. This is primarily because the City of Seattle has an enormous base for property, business, and sales taxes. Contrast the City of Seattle's percentage with that of Grant County. Although it covers 2,680 square miles, Grant County has only twenty-eight

and a half people per square mile.¹⁰⁴ Over 47 percent of the county is unincorporated and the City of Moses Lake, the county's largest city, has a population of 16,110. Grant County does, however, have Interstate 90 running right through it. In its most recent published statement of revenue, Grant County listed "Fines & Forfeits" at \$1,759,968. This represented 8.5 percent of its \$20,483,301 total general revenue.¹⁰⁵

Finally, it is worth noting that fine revenue in Washington in 2004 and 2005 was lower than in prior years because of the State Supreme Court's decision in *Redmond v. Moore*.¹⁰⁶ Again, that case found that the Department of Licensing could not validly suspend a driver's license unless it first provided an opportunity for an administrative hearing. The fallout from that decision was the invalidation of many suspended driving convictions and the penalties assessed for them. With the new statute in place,¹⁰⁷ licenses will once again be subject to revocation for non-payment of fines. Accordingly, accompanying revenues should increase from those in 2004 and 2005.

C. The Driver's License

1. A Practical Tool for a Practical Society

In order to appreciate the problems associated with using driver's licenses for debt collection, it is appropriate to first delve into the various policy rationales underlying the license requirement. Not surprisingly, none of these rationales have any relationship to the use of the license as collateral for debt.

There are few events in the life of an American teenager as significant and impacting as obtaining a driver's license.¹⁰⁸ A true cultural rite of passage, the driver's license irrevocably represents crossing a line on the path towards independence and adulthood. You can drive; granted, you may have to constantly negotiate to borrow a family vehicle, obtain a part-time job to pay for insurance and gas, follow parental-imposed rules about

the number of passengers you can have, etc. But you can drive. Freedom.¹⁰⁹

Society, however, has a different set of interests in licensing drivers,¹¹⁰ rather than supporting an emerging sense of maturity and independence in its teenagers and freeing parents from endless trips to soccer fields and music lessons. Obviously, driving an automobile is a complex task requiring a broad range of knowledge, skill, discipline, personal responsibility, and physical capacity. If done poorly, even for a brief moment, driving can also be extremely dangerous and destructive. These huge, heavy machines, hurtling through town and country, at remarkable speeds resulted in 42,643 deaths,¹¹¹ 2,697,000 injuries,¹¹² and \$230.6 billion in total economic costs from crashes in 2003.¹¹³

Therefore, it makes sense to have a systematic method for insuring that those operating these very dangerous machines possess some minimum acceptable knowledge of the rules of the road, as well as a minimum vision requirement (with or without glasses), and a minimum level of competence commensurate with the ability to safely operate the machine. Our licensing system involves a written test about the rules of the road, vision tests (including testing for red-green color blindness—a distinct disadvantage at stoplights), and a hands-on driving test. The “diploma,” signifying the successful completion of all of the criteria for qualifying to enter the ranks of drivers, is the driver’s license.

The conditional permission built into the notion of a driver’s license also provides a check and balance mechanism for denying access to these machines to those who, despite performing the fifteen-minute driving test satisfactorily, subsequently show themselves incapable or unwilling to use their automobile safely or wisely. Thus, if a driver reveals that he or she is an unsafe driver (e.g., an excessive number of moving violations,¹¹⁴ driving while intoxicated, fleeing an injury accident, etc.), the driver’s license can be revoked, thereby denying him or her the legal right to operate an automobile on public roads.¹¹⁵ For those tending to carelessness, the threat

of impending revocation alone might make them begin to exercise more caution.

Moreover, the driver's license provides a standardized mode of identification. This form of identification is widely recognized and used by various agencies and members of various law enforcement. For example, many law enforcement agencies use an individual's driver's license to conduct a quick computer search for outstanding warrants for criminal offenses, traffic offenses, or other violations.

Requiring all drivers to possess a driver's license combines what could be termed an "actuarial" policy (i.e., on the average, those who complete this process and maintain their licenses will be safer drivers than those who have not) and a "bright line" policy (i.e., the driver is *assumed* competent if he/she possesses a valid license, and is presumed incompetent if he/she has no valid license, with no case by case assessment of competency). The fact that someone is driving without a valid license neither causes actual harm nor necessarily increases any risk of harm, unlike other driving offenses such as reckless driving, driving while intoxicated, or vehicular homicide.

Someone without a valid license could be a very safe driver, as could someone whose license had been suspended for reasons unrelated to his/her safe operation of his/her vehicle. There is, in fact, no reason to believe in any particular case that the driver without a valid license might not be a better, safer driver than many with valid licenses. We all know the roads are filled with terrible drivers, most of whom undoubtedly are driving with valid licenses. In fact, it is challenging to drive more than a half an hour without encountering someone you want to scream at for doing something stupid and dangerous with his or her vehicle. In fairness, most of us have had a moment of distraction or terrible judgment where we were the stupid and dangerous ones who, but for fortune, would have caused a major accident. So, again, the lack of a driver's license by a particular individual neither causes nor increases any risk of harm to themselves or to others.¹¹⁶ While there are studies that establish a correlation between drivers with

revoked and suspended licenses and fatal accidents, these studies at best only tell us about alcoholics who continue driving. As we will explain in the next section, these studies have nothing to do with drivers whose licenses have been revoked for non-payment of fines.

Our making it illegal to drive without a valid license does not reflect a concern about individual criminality. Rather, the concern is a *systematic* one in which *ad hoc*, case by case assessment of each driver's ability to use his/her automobile safely and legally must, as a practical matter, be limited to a single, fifteen-minute driving test. This test leads to the presumption of competence carried by the license. No license, no competence—a clear, bright line.

We, therefore, criminalize and punish a person's willingness to drive without a valid driver's license. It does not seem that we do so out of any real retributive sense¹¹⁷ (neither author has any moral reaction to unlicensed drivers—perhaps only a practical concern about their competence). Rather, it is our desire for general deterrence¹¹⁸ which is at play. Our systematic approach to insure a minimum, acceptable level of knowledge and competency revolves around the necessary cultural fiction that this knowledge and competency is reified in a small, rectangle of plastic-protected paper which we dub a driver's license.¹¹⁹ Our system entirely depends on you having a valid license to drive. We threaten punishment to deter you from failing to work within this necessary system. But what about revoking licenses for non-safety related reasons, and then threatening larger fines and jail if that person continues to drive?

2. Revoking Driver's Licenses to Collect Fines and Parking Tickets

Revoking a driver's license because the driver has shown to be unsafe on the road is totally appropriate. Giving the state the ability to revoke the conditional permission built into the notion of a driver's license once a driver endangers or causes harm to others, is one of the rationales for licensing. Drivers who display that they are incapable or unwilling to

engage in this extremely dangerous activity in a reasonable manner simply must be taken off the road. We are, after all, literally dealing with life and death. But, as discussed at the beginning of this article, many licenses are revoked for reasons totally unrelated to driving safety; rather, the revocations are directly linked to failure to pay traffic fines.¹²⁰

A Closer Look at the Issue of Safety

Currently, some individuals might respond that criminal penalties, including incarceration, are justified for DWLS based on studies revealing a significant correlation between drivers whose licenses have been suspended or revoked and fatal automobile accidents.¹²¹ These studies show that in twenty percent of fatal accidents in America, at least one of the drivers was unlicensed.¹²² On a state by state comparison, the percentage of fatal crashes involving at least one unlicensed driver range from a low of 6.1 percent (Maine) to a high of 23.1 percent (New Mexico).¹²³ And one study shows that, though numerically the vast number of fatal crashes involved licensed drivers,¹²⁴ drivers with a suspended or revoked license are 3.7 times more likely to be in a fatal crash than a legally licensed driver.¹²⁵ This data sounds like pretty convincing support for dealing harshly with those driving on suspended licenses like our Sally, until you look closer.

In fact, these studies primarily considered drivers whose licenses had been suspended or revoked for driving under the influence of alcohol (DUI).¹²⁶ People who drink and drive are exceptionally dangerous.¹²⁷ They also tend to keep driving, even after one DUI conviction.¹²⁸ Thus, one might question whether it is more than coincidental that, in New Mexico, the state which has the highest percentage of unlicensed drivers who are involved in fatal accidents,¹²⁹ over 66 percent of drivers whose licenses were revoked for DUI continue to drive.¹³⁰ Not surprisingly, police report that alcohol is involved in a high percentage of fatal crashes.¹³¹

One plausible interpretation of these studies is that they tell us far less about unlicensed drivers than about drunk drivers. Driving with a revoked

license is really a proxy for a serious alcohol addiction. Therefore, these studies tell us little more than what we already know about alcohol, drunk drivers, and fatal accidents.

In contrast, there are no studies evaluating those driving with licenses suspended for reasons unrelated to safety (e.g., non-payment of fines):

More recent work has begun to look more closely at drivers who were suspended for reasons other than DUI violations, but details describing those other subpopulations and statistically valid evaluations of programs designed to address their specific needs are lacking at this time.¹³²

Though cited for the generic proposition that those found guilty of DWLS are dangerous,¹³³ the cited studies plainly have no bearing on our situation. The main study offering the impressive 3.7:1 ratio focused its analysis on two-car crashes in which only one person was found at fault (as evidenced by the issuance of a ticket for a moving violation).¹³⁴ The study did not specifically correlate the lack of a valid license with fault. In other words, the study never said unlicensed drivers were 3.7 times as likely to be at fault in fatal crashes; rather, the study found that unlicensed drivers were more likely to have been one of the drivers in a fatal crash, victim or otherwise.¹³⁵

In fact, even if we pretended that these studies involved license revocations for unpaid fines, the inferences connecting those with suspended licenses to fatal crashes still would be far from clear. Thus pretending that those whose licenses were suspended for nonpayment of fines were in the study, the inference from the 3.7:1 ratio in fatal crashes would not necessarily lead to any conclusion about driver safety. That is because, if we look at DWLS for nonpayment of a fine as generally being a proxy for poverty, then we are talking about a subpopulation that is driving crummy cars with poor safety features (e.g., no disk brakes, no airbags, etc.). Thus, fatality could be more a function of the quality of vehicle a low-income person can afford than the quality of his driving. In fact, some

states found it economically unfeasible to impound cars for nonpayment of fines, principally because the cars routinely were such “junkers” that they were worth less than the fines owed.¹³⁶ Of course, all of this is more than speculation; it is fantasy. We only *imagined* that the study involved drivers whose driver’s licenses were suspended for nonpayment of fines. In reality, there is no such study.

It is thus apparent that the use of revocations, further fines, and incarceration for the failure to pay traffic fines is not for the purpose of keeping us safe while on the roadway. It is to collect revenue. The system is not saying, “Do not drive without a license;” it is saying, “Do not drive until you have paid your fines and tickets in which case you’ll get your driver’s license back.” But the use of the criminal sanction for these ends, and in the particular context of allowing or denying the ability to drive, has very different social consequences than does the normal use of a penological threat aimed at deterrence.

Take burglary as an example. As a society, we do not want individuals to engage in burglary. We threaten jail to deter you and we will “specifically deter”¹³⁷ and “incapacitate”¹³⁸ you by placing you in prison if you are not deterred by the threat of the sanction and nevertheless choose to commit the crime. But, as a society, we are comfortable in the belief that no one needs to burgle.¹³⁹ If you are a junkie, get treatment. If you cannot afford your lifestyle, cut back and sell your toys. If you are too poor to pay for food and shelter, seek out some public or private social service. If the problem is that you simply do not enjoy conventional employment, then prison is simply the inevitable cost of your chosen profession.

While, as an abstract proposition, no one *needs* to drive, reality may be otherwise (at least when you’re living in an area, like all too many, where no effective mass transportation system exists).¹⁴⁰ All this merely reflects what amounts to a cultural truth: the entire American lifestyle is built around, and interwoven with, the automobile.¹⁴¹

3. The Automobile and the Life it Created

After demonstrating the reliability of the “horseless carriage” through a series of highly publicized demonstrations between 1906–1910,¹⁴² the automobile was almost instantaneously transformed from “novelty to necessity”¹⁴³ in the American consciousness. In 1904, 54,590 automobiles were registered in America.¹⁴⁴ Eight years later, nearly a million were registered.¹⁴⁵ By 1920, eight million were registered.¹⁴⁶ Likewise, sales between 1904 and 1912 increased from 22,130 a year to 356,000 a year.¹⁴⁷ In the process, America was transformed both socially and economically.¹⁴⁸

Most obviously, automobiles changed the landscape and geography of America as huge amounts of capital flowed to reshape society to fit the car.¹⁴⁹ Vast networks of roadways and highways¹⁵⁰ responded to the call of the motorcar for access and freedom, and the main streets and villages¹⁵¹ of Norman Rockwell's¹⁵² America gave way to businesses and shopping areas relocated within “driving distance.”¹⁵³ At the same time, city planners also let the automobile dictate the way, adopting the “expensive and ultimately unworkable policy of unlimited accommodation to the motorcar.”¹⁵⁴

Thus, for better or worse, current American society is structured around moving in cars. This reality carries both ideological and practical dimensions. Ideologically, we are a culture which prizes freedom of individual movement. The “open road,” the lure of what is “around the next turn” is in some sense a modern replication of the psyche of our pioneer ancestors who trekked across this land during the eighteenth and nineteenth centuries.¹⁵⁵ This is a nation with unrestricted freedom of travel.¹⁵⁶ We have no internal borders, no visas to travel from state to state. One can wake up in the morning and walk, drive, fly, or train in any direction time if resources permit.

For most Americans, work and home are connected by roads. Without a car, it is not easy to get to work.¹⁵⁷ In fact, many jobs offering more than the most minimum wages require that the applicant have a vehicle.¹⁵⁸ This includes most government positions and most construction jobs.¹⁵⁹ For

many, if you cannot drive, you cannot work. If you cannot work, you cannot make money. If you cannot make money, more likely than not, you cannot pay fines for tickets. So for the poor, who do not have the money to pay their initial traffic fines, which then results in suspension of their licenses, the legal mantra that “driving is a privilege not a right,”¹⁶⁰ rings hollow. The reality is that many need to keep driving, even though their licenses are suspended.

This leads to another way in which our situation is different than deterring a crime such as burglary. We do not want you to burgle, end of story. While we do not want you to drive without a license, that is not the end of the story. We are not indifferent to you being able to drive; we affirmatively *want you* to be able to drive, at least when required for work, obtaining food, clothing, shelter, and caring for family. So, therefore, the proposition that if you cannot pay your fines and tickets, you simply cannot afford to drive, fails to grasp the larger picture.

4. The Futility and Social Harm from Employing License Revocations and Jail Time to Coerce Revenue.¹⁶¹

This current dilemma is no different in the twenty-first century than it was in the 1300s. Debtor’s prison does not work when the debtor is impoverished. No money will be collected while the debtor is incarcerated, and he or she likely will be poorer when released. At the same time, the fine, license, and revocation “cycle” clogs court calendars, uses up significant police resources in the form of serving warrants, overcrowds the jails, and costs a fortune in expenses to incarcerate the indigent driver. The experience of the Washington courts bears witness to the counterproductive results of ultimately using the threat of jail to collect fines:

The most important aspect of these revisions [in Washington law in 1993] is that a driver can no longer be arrested on charges of [failure to pay (FTP), failure to respond (FTR) to a summons, or failure to appear (FTA)] at a hearing for a traffic infraction. Instead, the authority to incarcerate a violator is now based on the newly described crime of driving with a suspended license. In the majority of cases, the chargeable crime is third-degree DWLS,

based on an unpaid fine for a traffic infraction. The establishment of these misdemeanor provisions [was] viewed as a viable means of enforcing court orders and of reducing the high FTA/FTP rates associated with traffic infractions.

The new laws backfired. FTA/FTP rates increased because offenders failed to appear for hearings on the DWLS charge in addition to failing to appear for hearings on the underlying charge and failing to pay the original fine. Local courts were soon issuing bench warrants in record numbers, and law enforcement officers were executing a larger than average number of warrants during routine traffic violations. As a result, jail costs increased dramatically throughout the state, with unusual circumstances: some rural sheriffs reported making the decision to let violators go rather than cite them for DWLS third-degree, since local criminal justice system costs were getting out of control.¹⁶²

Moreover, as shown from the experience of using debtor's prisons, from the Middle Ages through the first half of the twentieth century, the real cost of the practice falls on the wider society. If you cannot work because you are not allowed to drive, we pay for social services and welfare for you and your children.¹⁶³ You do not contribute to societal productivity. You do not pay taxes. You have less of a stake in the broader society; for work engenders more than just earning economic income.¹⁶⁴ You will be more likely to try to get money through criminal means, or fill all the hours with nothing to do and little sense of self-esteem by numbing yourself with narcotics. Any children you have will live in a less stable home and likely lack a strong, positive role model—all of which will extort a societal price from future generations.¹⁶⁵

D. Current, Yet Problematic, Solutions for Indigents to Pay Court Fines

There are a variety of methods currently used by lower trial courts to collect fines from low-income defendants. Before considering the efficacy of each of these methods once a defendant's license has been revoked for nonpayment, we will first consider how each of these methods will likely

impact the indigent defendant possessing a valid driver's license who now faces his first set of fines.¹⁶⁶

1. Installment Plans and Deferred Payment Plans Generally

This system for alleviating unrealistic economic demands on the indigent has proven somewhat effective in a number of court systems,¹⁶⁷ and even bears the imprimatur of the United States Supreme Court.¹⁶⁸ However, there are consequences if you fail to meet your payments. For instance, you will be brought into court on a "show cause" hearing¹⁶⁹ where the court will require you to show why you should not be assessed the full amount now or even thrown into jail for civil contempt (assuming you have the money) until you pay. So what, you may respond; if you appear to be abusing the leniency and accommodation that allows you to pay in installments, the court has every right to make you come back and explain.

While this may seem to make complete sense, the situation has some complex facets. The defendant may have paid his traffic fine, but, due to a clerical mistake the fine still shows on his record. Or, the defendant may have honestly believed he "sent that check out with the electricity bill and car payment,"¹⁷⁰ yet because of the transient and/or chaotic existence of the indigent,¹⁷¹ he may have never received the notice of his court hearing. Even if the defendant received the notice, he may have transportation problems: his junker car broke down; his cousin who was to drive him failed to show up. He may be afraid to jeopardize his job if he goes to court and not to work, and yet be afraid to tell his supervisor about his legal problems. Of course, if he does not show up to court, there will be charges, fines, and other costs for failure to appear. A warrant will be issued and warrant costs will be added to the original fine.¹⁷² When he is arrested, he will be taken to jail where he will likely remain for a day or two before his court appearance. As a result, the individual may lose his job, thus inadvertently creating more financial strain on his ability to pay the court.

All that said, offering payment plans is a welcome evolution in dealing with spiraling fines and low-income defendants.

A New Generation of Rational Payment Plans that Still Fall Short

Some courts in Washington have begun a system that is sensitive to low-income driver's inability to pay their traffic fines. In one court system, a special "relicensing calendar" gives first-time DWLS3 offenders a chance to keep their licenses by setting up a payment plan. Once the defendant has made the first payment, a hold is placed on their license suspension for a year, during which time he can pay off the fine.¹⁷³ In another Washington court system, the DWLS3 offender meets in a session with an ombudsmen and a representative of DOL to work out a payment plan. They then go to criminal court, the defendant waives his right to a speedy trial, and the case is continued ninety days, at which time the defendant must report on his progress. If needed, the court will continue the case to give the defendant a reasonable chance to pay off his fines and keep his license.¹⁷⁴ In another forum, a non-profit community agency works with the defendant, interceding with the court on his behalf.¹⁷⁵ The agency will work out a plan where the court will withdraw the outstanding fines from collection, waive the collection fees, set up a payment or community service plan, may reduce the total fines, and lift the hold on the driver's license as soon as the first installment is paid. Some courts have even developed plans with collection agencies, setting a low-income payment scale and lifting the suspension after the first payment.¹⁷⁶

All of these approaches are far preferable to previously available options for the low-income driver who has lost his license due to nonpayment of fines. Yet, all is not so rosy. If the defendant misses an installment payment, he is off the plan.¹⁷⁷ Once again, he will not have a valid license. To get back on the plan, he will have to pay significant fees. If the plan involves a collection agency, he may be required to pay 50 percent of the total debt owed.¹⁷⁸ For people so close to the margin, not having the extra

money to pay an installment any particular month is not an unlikely scenario. A lost job, a sick child, or a breakdown of the junker auto, may cause the money to be unavailable that month. After all, this debt doesn't represent anything "real" in this person's life; it is made up, a societal construction which does not correlate to any human need like food, clothing, and shelter. When the money is spent on fines, the indigent person has nothing to show for it, except that the state may leave him alone. So what will these well-intentioned payment plans really accomplish? For some, it will all work out well. They will make their payments and keep their licenses. But for many who are low-income, the plan which seemed so promising at first will crumble. Soon, their licenses will be suspended and the government will be on their backs—more fines, more arrests, more warrants.¹⁷⁹ For the state, whatever additional monies they collect through these payment plans will be offset by costs for program administration, warrants, court hearings, and other similar expenses.

Thus far, we have been talking about the working poor. However, many people on welfare or Social Security Income (SSI)¹⁸⁰ also need cars to shop and take themselves and their children to the doctor. When the Department of Social and Health Services (DSHS) allocates \$440 per month for a person to live, expecting the recipient to consistently pay \$75 a month to a court payment plan, where the money basically goes into the ozone, is a bit unrealistic.

2. Community Service

Providing the option of community service to pay off fines is a reasonable one so long as the defendant has legal transportation to get to the site. In this payment alternative, a court has the discretion to allow community service in lieu of paying a fine. The court has the discretion to determine which fines may qualify for such a program. In the City of Seattle, the defendant is credited \$10 toward their fine for every hour of community service.¹⁸¹ The problem, of course, is that while doing

community service, the defendant cannot go to his job. In community service the defendant earns "money," but it can only go to fines, not to life's basic needs. The counterproductive possibilities from this scenario are apparent. Time spent at community service cannot be devoted to seeking or engaging in paying employment. In fairness, most courts are flexible about when this service can be done, offering opportunities to fulfill the community service on the weekend for those working during the week, and vice versa.

While superficially appealing, using community service in the revoked license context is problematic. Initially, giving the defendant the ability to pay off his fines through community service does not give him a driver's license, at least not until the fine is paid off. At a scale like Seattle's \$10 rate, paying off a fine which could be thousands of dollars would require well over one hundred hours of service, and, thus, would deny the defendant a license for a very long time. This service also would consume large blocks of time which otherwise could be dedicated to finding and/or going to work. This impediment to being reasonably available to the employment market would be further exacerbated by the fact that the defendant still cannot legally drive (even to the community service site).

Admittedly, this dilemma could be obviated if, analogous to payment plans, the defendant would receive a license upon completing a set number of community service hours, and then making monthly "installment payments" of community service hours.¹⁸² Putting aside the cost and burden of the administrative structure needed to maintain the long-term accounts required for multiple "installment payments," problems may arise during a month that an installment payment is owed (e.g., the defendant's child becomes ill, a car breaks down, the defendant must suddenly move from her home to a shelter to flee domestic violence).

At this point, familiar problems arise. Plainly, the defendant could go into court and explain the situation. But, if his life is in chaos, it may be unrealistic to expect him to take the initiative to set a court hearing date on

his own (particularly, given the “sociology of poverty,” discussed *infra* section E, subsection 1). The court could, of course, send notice to the defendant and set a hearing, but that raises all the problems of the lack of reliable communication in the life of many low-income people.¹⁸³ If a hearing is set and the defendant fails to show up, presumably his license will be revoked again. He might never receive notice of the revocation and, once again, unwittingly be driving on a revoked license. Once arrested and brought back into court for this new DWLS3 charge, he will owe even more money, including costs like those accompanying reinstatement with the community service payment plan.

3. Collection Agencies

Many courts now contract with collection agencies to which they assign delinquent traffic fines.¹⁸⁴ Notices from collection agencies certainly work with the authors—our credit is a big deal. We are not saying that the indigent are indifferent to such things.¹⁸⁵ They want to buy cars, and many dream of one day pulling themselves out of poverty and owning a house. All in all, referring unpaid fines to collection agencies is far more socially beneficial and rational than simply holding defendants in contempt and jailing them. Nevertheless, there are some problems. Poorer citizens are often transient and do not maintain a reliable means of receiving notices and communications (like those from collection agencies) as do more economically stable members of our society.¹⁸⁶ Moreover, collection agencies add fees on top of the fines, which can mount over time creating a nearly insurmountable economic burden for the indigent.¹⁸⁷ While collection agencies sometimes offer payment plans geared to low-income defendants, the availability of such a payment option may vary with the particular court, with the same collection agency offering this option for defendants from some courts in the jurisdiction and not others.¹⁸⁸ Also, collection agencies offering a payment plan geared to low-income defendants may add the traffic fines to any other debt the defendant owes

which is also under collection (e.g., furniture), and will only send notice to the court of fulfillment of the defendant's obligations when all amounts owed (including those not resulting from traffic infractions) are eventually paid.¹⁸⁹

Finally, there is another factor at play. A representative interviewed from the non-profit community-based organization that helps people reactivate their licenses explained that of the 150 people they see each month, 75 percent could get back their licenses, yet only 20 percent of this group did so.¹⁹⁰ Why? This is a function of what one could term "the sociology of poverty."

E. The Difficulties Continue: A Recommendation to Scrap the Entire Enterprise

1. The Sociology of Poverty

A report by Washington State courts concluded that the great majority of those caught in the cycle of unpaid tickets, failed court appearances, and revoked licenses were not in that situation due to negligence or indifference; they simply were not capable of dealing with the court system which both intimidated and overwhelmed¹⁹¹ them with its perceived complexity.¹⁹² In that regard, their inability to work through the court system likely parallels experiences many of us have had with large, bureaucratic institutions. As Professor Lawrence Shulman has noted,

The reader can surely provide numerous examples in which the size and complexity of a system, difficulties in communications, or the ambivalence of the system towards its clients cuts them off from the services they require. Since the individual who needs to use the system is also complex, feels some ambivalence towards the service, and has difficulty in communications, breakdowns become almost inevitable.¹⁹³

Also, the conclusion of the Washington State Report is completely consistent with social work research that has found that the strength of a

person's motivations to pursue and complete a given goal is strongly influenced by their own belief in their capability to achieve the goal. This concept, termed "self-efficacy belief,"¹⁹⁴

. . . 'determine[s] their level of motivation, as reflected in how much effort they will exert and how long they will persevere in the face of obstacles.' Research has suggested that the stronger the belief in one's capabilities, the stronger will be the effort to reach the goal.¹⁹⁵

Most of us understand this from our own experiences, probably those from school. If we felt unsure of solving algebra problems with several unknowns, we would half-heartedly struggle for a while, and then throw down our pencils. No one can function without self-confidence. Of course, part of that confidence is actually having the requisite knowledge and skills. In other words, our confidence problem in algebra may have been justified by a lack of knowledge, and we needed to meet with the teacher to work on solving these equations.

Life skills—effectively organizing, communicating, negotiating your way through governmental institutions and private bureaucracies—are no different. A well-regarded approach to social work is based on the construct that the clients actually possess the skills needed to cope,¹⁹⁶ but that they do not recognize their own capabilities. Nonetheless, social workers recognize that some individuals lack skills needed to effectively interact with other individuals and institutions, and that these skills must be imparted.

For example, the Director of Social Work Clinical Field Studies at Seattle University, herself a social worker with twenty-five years experience, told us that

An emerging trend in programs such as homeless transitional housing is to incorporate a one-on-one relationship with a casework manager into the project. The manager will require weekly meetings, both to develop the necessary habit of keeping track of and fulfilling regular commitments with those in authority

and to install life skills, such as setting goals, budgeting, keeping a checking account, planning menus, shopping for food, and such. Alternatively, part of the commitment may be to attend a series of weekly life skills classes.¹⁹⁷

Helping impart these skills (directly or indirectly through appropriate resources) thus is as much a part of the social worker's world as teaching how to solve particular equations is of the algebra teacher's.

Skills training. One gift that the social worker can bring to clients is the knowledge of particular skills for living that clients may find give them new options, which can be empowering because by using those skills clients may come to have more voice and influence over their worlds.¹⁹⁸

In fact, when discussing the type of "coping skills" that are needed to interact with institutions, one social work text notes:

This method goes beyond simply giving information; you will be teaching clients skills in manipulating their environment so as to achieve desired outcomes. You may need to teach clients how to claim their rights and entitlements. Teaching coping skills require[s] a painstaking consideration of the small details of daily living.¹⁹⁹

Everyone reading this article possesses these skills to a greater or lesser degree. Most of us did not consciously study or train to learn them. These skills were imparted in the fabric of our daily reality. This is obviously not the case for so many of those whose licenses have been suspended for failure to pay fines, and who are now trapped in "the cycle."

2. Decriminalization of DWLS for Nonpayment of Fines: A Beginning

Recently, there have been discussions in Washington about decriminalizing DWLS3 for nonpayment of fines.²⁰⁰ This would eliminate debtor's prison for low-income individuals, and save local jurisdictions the costs associated with enforcement by police, the large expense of criminal court resources, and the costs of incarceration. But, low-income people

would still not have their driver's licenses. They would keep driving, keep getting cited for DWLS3 and various equipment-related tickets, and just owe more and more to the state than they would ever be able to pay.

3. The Solution: The Choice Not to Revoke for Nonpayment

In the previous section we looked at various options for dealing with the loss of a driver's license due to nonpayment of fines. We concluded that none of these options are appropriate and that the entire notion of revoking driver's licenses for nonpayment of fines should be rejected. So, where does this leave us? If a driver signs a promise to appear and fails to appear (FTA), a warrant should issue. The authority of the court must be respected, and those flaunting that authority cannot be ignored. If drivers simply do not pay tickets, however, the state should collect the money through any of the methods we discussed.²⁰¹ Also, as an additional incentive to payment, we need to *educate* people about the consequences of not paying tickets on their credit record.²⁰² From the experience of all the attorneys and agency members we have interviewed, other than a relatively small group of scofflaws (estimated at 8 to 10 percent),²⁰³ most people want to pay their tickets. They just do not have the money; they are low-income and just holding on, or truly impoverished. Even if it turns out that much of the money they owe will not be collected by the methods we have discussed,²⁰⁴ as we have seen, the economic and social costs of using driver's licenses as a wedge to collect money leaves the net balance of society's balance sheet overwhelmingly in the red.²⁰⁵

CONCLUSION

Whatever solution one arrives at for the problem of collecting fines, society should never revoke a driver's license for non-safety related issues. Using revocation to collect revenue is the functional heir of the debtor's prison. Most low-income individuals need to drive to continue working. But if they continue to drive, they will go to jail, avoidable only by paying

the monies owed—monies they do not have. This current variant on what is basically a medieval theme replicates that same futility and resultant harm to the interests of the wider society that debtor's prison has always borne. While it is beyond the scope of this article to recommend the best option for collecting fines from low-income people, we have discussed a number of reasonable methods. However, courts simply must come to accept that government cannot even partially fund itself on the backs of the poor by using the threat of incarceration. It is time for the courts to stop hitting their heads against the wall.

¹ J.D. Stanford Law School, 1970. The author wishes to thank Seattle University School of Law for a grant supporting this work, Mary Wolney for sharing her vast knowledge on the subject, Laverne Jones for teaching me about relicensing programs, Ruth White and Mary Kay Brennan who educated me about the sociology of poverty, and Phyllis Brazier for her word processing acumen.

² J.D. University of Washington School of Law, 1983, M.L.S. University of Washington, 1985.

³ "A total of forty-four states have instituted some form of administrative [driver's] license suspension [i.e., driver is eligible to regain driver's license once fulfills specific conditions] or revocation [i.e., loss of driver's license for specific time period, with conditions to re-obtain once period passes] to combat recidivism rates for Driving While Intoxicated (DWI) and Driving Under the Influence (DUI). Many of these states also suspend or revoke driving privileges for failure to pay or appear in court in response to traffic infractions." MARTI MAXWELL, INSTITUTE FOR COURT MANAGEMENT, COURT EXECUTIVE DEVELOPMENT PROGRAM PHASE III PROJECT: NEW STRATEGIES ADDRESSING THE IMPACT OF DRIVER'S LICENSE SUSPENSIONS [8] (May 2001), available at

http://www.ncsonline.org/D_ICM/Research_Papers_2001/The_Suspended_Driver.pdf.

Washington State is among the states suspending driver's licenses for nonpayment of fines. See WASH. REV. CODE §§ 46.20.289, 46.20 291(5) (2005); JOAN FEREBEE, INSTITUTE FOR COURT MANAGEMENT, COURT EXECUTIVE DEVELOPMENT PROGRAM PHASE III PROJECT: BEST PRACTICES FOR COLLECTION OF TRAFFIC FINES IN THE EDMONDS MUNICIPAL COURT 33–34 (May 2001), available at

http://www.ncsonline.org/D_ICM/Abstracts_2001/Best_Practices.pdf. States with similar practices are (1) Ohio, FEREBEE, *supra*, at 50, (2) Maryland, *id.* at 49, (3) neighboring Oregon, ROBERT A. SCOPATZ, ET AL., AAA FOUNDATION FOR TRAFFIC SAFETY, UNLICENSED TO KILL—THE SEQUEL 43 (Jan. 2003), available at <http://www.aaafoundation.org/pdf/UnlicensedToKill2.pdf>, and (4) Florida, *id.* at 32.

⁴ In the State of Washington, driving when your driver's license has been suspended for nonpayment of fines is designated "driving while license suspended or revoked in the third degree" (DWLS3rd), and classified as a misdemeanor. WASH. REV. CODE § 46.20.342(1)(c)(iv) (2005).

⁵ In the State of Washington, a misdemeanor is punishable by up to ninety days in jail. WASH. REV. CODE § 9A.20.021(3) (2005). Throughout the state, there are courts that sentence multiple offenders to several months in county jail. *See* Interview with Mary Wolney, former Senior Attorney in the Defenders Association of King County, Seattle, WA. (June 30, 2005) (on file with authors). Ms. Wolney, a former Senior Attorney in the Defender Association of King County, Washington, is considered the leading authority on suspended driver's licenses on both a state and national level.

⁶ "Specific deterrence is an alternative utilitarian goal. Here, *D*'s punishment is meant to deter future misconduct by *D*. Specific deterrence may occur in two ways. First, there is deterrence by incapacitation: *D*'s imprisonment prevents him from committing crimes in the outside society during the period of segregation. Second, upon release, there is deterrence by intimidation: *D*'s punishment reminds him that if he returns to a life of crime, he will experience more pain." *See* JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 10 (Matthew Bender & Co. ed., 2d ed. 1995) (footnote omitted); *See also* RICHARD G. SINGER & JOHN Q. LA FOND, CRIMINAL LAW: EXAMPLES AND EXPLANATIONS 19 (2d ed. 2001).

⁷ Though "Sally Jones" is an obvious pseudonym, her story is real. *See* Interview with Mary Wolney, *supra* note 5.

⁸ None of this was unusual: "Over 40 percent of traffic violation defendants do not pay their overdue fines." FEREBEE, *supra* note 3, at 7.

⁹ There are "people who simply forgot about the court appearance or fine and who had their licenses suspended because of honest or careless oversight." MAXWELL, *supra* note 3, at [30].

¹⁰ WASH. REV. CODE § 3.62.090 (2005).

¹¹ Adding the Washington statutory penalty of \$25 to a \$22 "state assessment," makes the penalty for not responding an additional \$47 on top of the ticket. FEREBEE, *supra* note 3, at 27; *see also* WASH. REV. CODE § 46.63.110(4) (2005).

¹² In Washington, collection agencies, which contract with a local court, add 30%. Interview with Mary Wolney, *supra* note 5. Or even up to 50% onto the original ticket and added court costs, FEREBEE, *supra* note 3, at 34 ("A reasonable fee, not to exceed 50% of the outstanding debt . . ."). *See also* WASH. REV. CODE § 19.16.500 (2005) (permits courts and other governmental bodies to employ collection agencies to recoup fines); WASH. REV. CODE § 46.63.110(d) (2005) (courts can contract with "outside entities" to administer payment plans).

¹³ *See* Interview with Mary Wolney, *supra* note 5.

¹⁴ In *Redmond v. Moore*, 91 P.3d 875 (Wash. 2004), the Washington Supreme Court found it unconstitutional to suspend licenses for nonpayment of fines, without opportunity for a hearing. *Id.* at 677. After a year moratorium following *Moore* on all suspension of licenses for nonpayment, new legislation went into effect requiring at least a phone or e-mail hearing if requested. 2005 Wash. Sess. Laws 1094, 2005 Wash. Legis. Serv. Ch. 288 (West). The legislation also gave amnesty to the over 200,000 people whose licenses had been revoked under the old regime (even though they still had unpaid fines). *See* Candace Heckman, *Rules on Suspended License Ease Tomorrow*, SEATTLE POST INTELLIGENCER, June 30, 2005, at B1. The new legislation reinstated revocation of driver's licenses for non-payment of fines. WASH. REV. CODE § 46.63.110(6)(b)

(2005). At the same time, it set up a payment plan system which allows defendants to re-obtain their licenses. WASH. REV. CODE § 46.63.110(6) (2005). Specifically, when in its discretion a court determines that a defendant cannot pay the fines at once, the court “shall” set up a payment plan “of reasonable payments based on the financial ability of the person to pay.” *Id.* Upon receiving the first payment, the court will notify the department of licensing, and “the department shall rescind any suspension of the person’s driver’s license or driver’s privilege based on [previous] failure to respond to that infraction.” *Id.* If, however, the defendant has had a previous payment plan for the same fine(s) or a payment plan on other fines that the defendant failed to complete, the court has the discretion *not* to put the defendant on a plan and instead demand payment of all monies due. *Id.*

¹⁵ See Interview with Mary Wolney, *supra* note 5.

¹⁶ In fact, in Washington State, the officer could have just run her plates and determined that she was a suspended driver. See *State v. McKinney*, 60 P.3d 46, 52 (Wash. 2001) (no expectation of privacy in license plates, driving record). Also, Washington has a statute which permits a temporary detention, see generally *Terry v. Ohio*, 392 U.S. 1 (1968), of any car registered to a person whose license has been suspended or revoked (providing the driver fits the physical description of the suspended driver). See, REV. CODE WA 46.20.349. Other states issue special license plates to alert police to the suspended status of the suspended registered owner. See, FEREBEE *supra* note 3, at 20 (Oregon), 42 (Minnesota).

¹⁷ While many jurisdictions in Washington have public defenders stationed in court where criminal traffic defendants make their first appearance, “[u]nfortunately, in many courts no public defender is available and the judge does not conduct the thorough inquiry the case law contemplates to support a valid waiver.” Robert C. Boruchowitz, *The Right to Counsel: Every Accused Person’s Right*, WSBA BAR NEWS, Jan. 2004, at 25 [hereinafter Boruchowitz, *Right to Counsel*]. The situation, moreover, “is not limited to Washington.” Robert C. Boruchowitz, *How to Deal with the Denial of Counsel in Misdemeanor Cases Post-Shelton*, THE ADVOCATE, Jan. 4, 2005, at 8. [hereinafter Boruchowitz, *Denial of Counsel*]. The lack of counsel in DWLS3^o cases, cases which basically entail collecting a series of documents from the DOL, routinely results in immediate pleas, even though there is a range of available and effective defenses focusing on the accuracy of the underlying information, the legal basis for the suspension order, and the legality of the notice. See Interview with Mary Wolney, *supra* note 5.

¹⁸ The reporter for the Municipal Court of Edmonds study recognized this economic spiral when she wrote: “In the State of Washington this is a criminal offense with a penalty of up to \$1,000 and up to ninety days in jail. This creates another fine the defendant most likely will not be able to pay.” FEREBEE, *supra* note 3, at 10–11.

¹⁹ In interviews with those familiar with DWLS3^o, the consensus was that 90% of the defendants wanted to pay their tickets, they just lacked the resources. See Interview with Mary Wolney, *supra* note 5; See Interview with LaVerne Jones, Counselor at Central Area Motivation Program (CAMP), Seattle, WA. (June 28, 2005) [hereinafter Interview with LaVerne Jones]. Miss Jones is a counselor at CAMP, a community-based, non-profit organization which has contracted with the Seattle Municipal Court to help people

get re-licensed after suspension. See MAXWELL, *supra* note 3, at [7–8] (discussing CAMP re-licensing program). See Interview with LaVerne Jones, *supra*.

²⁰ Ironically, even maintaining the car is extremely expensive for the low-income defendant. See Bureau of Trans. Statistics, National Trans. Statistics: Table 3-14: Average Cost of Owning and Operating an Automobile (2004), available at http://www.bts.gov/publications/national_transportation_statistics/2004/html/table_03_14.html.

²¹ It is estimated statewide that 30-70% of suspended or revoked drivers continue to drive, MAXWELL, *supra* note 3, at [10], with an estimate of 50% for Seattle, *id.* at 9. This is consistent with national findings that the majority of suspended drivers still drive sometimes. SCOPATZ ET AL., *supra* note 3, at 9.

²² See, e.g., MAXWELL, *supra* note 3, at [29] (“A random review of 60 third-degree DWLS cases revealed an average of 4.6 financial responsibility (lack of insurance) citations per defendant. On this charge, it is very easy for defendants to accumulate several thousands dollars’ worth of fines in a short period of time”). See also *id.* at [41] (“In the fall of 2000, for example, state researchers analyzed a sample of nineteen people serving time in Yakima County Jail for third-degree DWLS. These prisoners had an average of \$8,000 in fines, ranging from \$4,000 to \$24,000.”).

²³ “Many low income workers must work evening or late-night shifts, when public transportation is either infrequent or nonexistent. Parents also need to take their young children to daycare before work and pick them up afterwards.” *Id.* at [37-38]. Further, what mass transportation is available to the poor is often poorly maintained and unreliable. JANE HOLTZ KAY, ASPHALT NATION: HOW THE AUTOMOBILE TOOK OVER AMERICA AND HOW WE CAN TAKE IT BACK 36-37 (1997) (“Even low-income neighborhoods fortunate enough to have trains or street cars tell tales of service run amiss—of broken escalators for hospital-bound Harlem riders, of a Chicago elevated train so broken down that the transit authorities attached an empty car at the end to buffer bumps.”). Some have contended that deliberate, corrupt actions by the automobile industry are part of the cause of our nation’s inadequate mass transportation system. See, e.g., JAMES J. FLINK, THE AUTOMOBILE AGE 364-65 (1988) [hereinafter FLINK, AUTOMOBILE AGE].

²⁴ For a description of the various public and private re-licensing programs in Washington, see, MAXWELL, *supra* note 3, at [31–39]; Boruchowitz, *Right to Counsel*, *supra* note 17, at 28-29; Boruchowitz, *Denial of Counsel*, *supra* note 17, at 9-10; District Court, Clark County Washington, Driver’s License Restoration, <http://www.clark.wa.gov/courts/district/license.html> (last visited Oct. 11, 2005); Washington Courts, “Courts of Limited Jurisdiction—Delivery Services Work Group Meeting (July 31, 2003), available at http://www.courts.wa.gov/programs_orgs/poss_bja/?fa=pos_bja.cftf&cftf=wg_dj_min_20030731. See also *supra* note 14 (discussion of mandated payment plan under new Washington statute, WASH. REV. CODE § 46.63.110(6)).

²⁵

At last Mr. Micawber’s [financial] difficulties came to a crisis, and he was arrested early one morning, and carried over to the King’s Bench Prison in the Borough. He told me, as he went out of the house, that the God of day had

now gone down upon him—and I really thought his heart was broken and mine too. But I heard, afterwards, that he was seen to play a lively game at skittles, before noon.

On the first Sunday after he was taken there, I was to go and see him, and have dinner with him. I was to ask my way to such a place, and just short of that place I should see such another place, and just short of that I should see a yard, which I was to cross, and keep straight on until I saw a turnkey. All this I did; and when at last I did see a turnkey (poor little fellow that I was!), and thought how, when Roderick Random was in debtor's prison, there was a man there with nothing on him but an old rug, the turnkey swam before my dimmed eyes and beating heart."

CHARLES DICKENS, *DAVID COPPERFIELD* 188 (Tom Doherty Assocs. 1998) (1870).

²⁶ PATRICK O'BRIEN, *POST CAPTAIN* 87 (W.W. Norton & Co. 1972) ("Captain Aubrey . . . they have come to arrest you for debt.").

²⁷ E-mail from Doralyn DeLeGarde, Management Analyst, Driver's Responsibility Section, Washington State Department of Licensing, to Kelly Kunsch, Reference Librarian, Seattle University School of Law (June 15, 2005) (on file with authors).

²⁸ See Interview with Mary Wolney, *supra*, note 5. *Cf.* MAXWELL, *supra* note 3, at [40] (In a Wisconsin study, the results "showed that 58 percent of all [driver's] license suspensions in the county were the result of failure to pay a traffic fine. The highest suspension rates were for residents of low-income neighborhoods that qualified for Community Development Block Funds. . . . These are the same areas that tend to have higher concentrations of minority residents").

²⁹ See MAXWELL, *supra* note 3, at [15]. "20% to 30% of all misdemeanors in Seattle are DWLS third degree . . ." *Id.* at [13].

³⁰ In Washington State, "courts of limited jurisdiction" refers to the courts handling criminal misdemeanors: the district courts (county) and municipal courts (city). "More than two million cases are filed each year in Washington's District and Municipal Courts, representing seven out of every eight cases filed in the state (parking violations excluded)." *Id.* at [3]. 61.6% of these involve criminal traffic violations. *Id.*

³¹ *Moore*, 91 P.3d 875.

³² WASH. REV. CODE § 46.63.110 (2005).

³³ Richard Ford, *Imprisonment for Debt*, 25 MICH. L. REV. 24, 24 (1926-27).

³⁴ *Id.* at 24-25.

³⁵ *Id.* at 25.

³⁶ *Id.* See also Derek A. Westen, *Fines, Imprisonment, and the Poor: "Thirty Dollars or Thirty Days,"* 57 CAL. L. REV. 778, 779 (1968); Becky A. Vogt, *State v. Allison: Imprisonment for Debt in South Dakota*, 46 S. D. L. REV. 334, 334-55 (2001). See also Vogt, *supra*, at 338-39 & n.42, 43 (discussion of Rome's first written law, "the Twelve Tables," which, in part, laid out the rules for collection of civil debt).

³⁷ See Ford, *supra* note 33, at 28; see generally PETER J. COLEMAN, DEBTORS AND CREDITORS IN AMERICA—INSOLVENCY, IMPRISONMENT FOR DEBT AND BANKRUPTCY, 1607-1900 (The State Historical Society of Wisconsin 1974).

³⁸ See Ford, *supra* note 33, at 25.

³⁹ See *id.* at 25.

⁴⁰ *Id.*

⁴¹ See *id.* at 27; COLEMAN, *supra* note 37, at 4–5; Vogt, *supra* note 36, at 341–42.

⁴² In BLACK’S LAW DICTIONARY 208 (6th ed. 1990), Capias ad respondendum (AKA, Mesne) is defined as:

A judicial writ (usually simply termed a ‘*capias*’, and commonly abbreviated to ‘*ca. resp.*’) by which actions at law were frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. It notifies defendant to defend suit and procures his arrest until security for plaintiff’s claim is furnished.

Id. See also Ford, *supra* note 33, at 27–28; Vogt, *supra* note 36, at 334–35 & n.2; Note, *Present Status of Execution Against the Body of the Judgment Debtor*, 42 IOWA L. REV. 306, 307 n.10 (1956-57) [hereinafter Note, *Present Status*]; HUGH BARTY-KING, THE WORST POVERTY: A HISTORY OF DEBT AND DEBTORS 5 (1991). In America, use of this process was not without cost to the creditor; for if they chose Mesne, they lost the right to seize the debtor’s property—you got the body or property, not both. See COLEMAN, *supra* note 37, at 5.

⁴³ See Note, *Present Status*, *supra* note 42, at 312.

⁴⁴ See Vogt, *supra* note 36, at 341.

⁴⁵ In BLACK’S LAW DICTIONARY 208 (6th ed. 1990), Capias ad satisfaciendum is defined as:

A writ of execution (usually termed, for brevity, a “*ca. sa*”), which commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, to *satisfy* the damages or debt and images in certain actions. It deprives the party taken of his liberty until he makes the satisfaction awarded. A body execution enabling judgment creditor in specified types of actions to cause arrest of judgment debtor and his retention in custody until he either pays judgment or secures his discharge as an insolvent debtor.

Id. See also Ford, *supra* note 33, at 28; Vogt, *supra* note 36, at 334–35 & n.3.

⁴⁶ Vogt, *supra* note 36, at 342; COLEMAN, *supra* note 37, at 5. “[S]ome debtors arrested on *mesne* process protected their assets from seizure by electing to remain in jail. This waiting strategy assumed that the creditor would eventually relent, if only because he gained nothing except perhaps malicious satisfaction from keeping a debtor in prison. COLEMAN, *supra* note 37, at 9. See also Vogt, *supra* note 36, at 345 (similarly, in America, “some debtors chose to remain in prison rather than be stripped of their assets”).

⁴⁷ COLEMAN, *supra* note 37, at 5. Cf. Westen, *supra* note 36, at 779 (“In the Middle Ages in England an individual unable to pay a fine could remain in prison for life.”).

⁴⁸ See COLEMAN, *supra* note 37, at 4-5, 9; Vogt, *supra* note 36, at 335, 343.

⁴⁹ See Ford, *supra* note 33, at 28. The notion of a federal debtor's prison was finally abolished in 1948. *Criminal Law—Alabama Raises the Rates at which Individuals in Jail for Nonpayment of Fines Earn Out Their Debts*, 116 HARV. L. REV. 735, 735 (2002). See also 28 U.S.C. § 2007(a) (2005) (“A person shall not be imprisoned for debt [through] process issued from a court of the United States in any State wherein imprisonment for debt has been abolished.”).

⁵⁰ See BRUCE H. MANN, *REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE* 85–86 (2002).

⁵¹ Ford, *supra* note 33, at 29. Interestingly, in the South, though the institution of slavery flourished, imprisonment for debt was all but nonexistent. See *id.* at 28–29. On the other hand, during this same period, imprisonment for debt was utilized in every European country except Portugal. *Id.* at 30.

⁵² For an argument that courts' use of their contempt power to coerce payment of taxes and child support is functionally a resort to debtor's prison, see Richard E. James, *Putting Fear Back Into The Law And Debtors Back in Prison: Reforming the Debtor's Prison System*, 42 WASHBURN L. REV. 143, 148 (2002).

⁵³ See *id.* at 157 (“By the early nineteenth century, several states had constitutions that prohibited imprisonment for debt, and by the early twentieth century, most of the forty-eight states had followed suit either through their constitution or by statute.”); Vogt, *supra* note 36, at 347. Calls for the abolition of debtor's prison long preceded the widespread abandonment: Then [when debtor's prison is abolished] the barbarism of an age that could tolerate a debtor's prison will seem less than that of those dreadful times when prisoners were tortured to made confession against themselves. See William Henry Arnoux, *Civil Imprisonment*, 24 ALB. L.J. 106 (1881–82).

⁵⁴ The use of Mesne in modern America, varied from state to state, and lasted into the 1960s. Ford, *supra* note 33, at 32–33. After the 1830s, state constitutions and statutes took one of three forms: (1) those totally prohibiting Mesne, (2) those permitting Mesne in tort, and (3) those forbidding Mesne in contract. See Note, *Present Status*, *supra* note 42, at 307-08. The laws were further complicated by the various exceptions to the use of body attachment (i.e. Mesne) that a particular state might recognize, such as the class of debtor (e.g., no females or minors), the amount of the debt and the cause of action (e.g., contract vs. fraud), and specific findings of fact that first had to be found by a court (e.g., the acts or omissions by the debtor were “malicious”). *Id.* at 310. See also Ford, *supra* note 33, at 34 (author notes wide use of Mesne in 1950s Michigan).

⁵⁵ In 1872, one scholar decried the availability of Mesne, noting “[h]owever wise or judicious these provisions of the code may be, in and of themselves[,] in the hands of rapacious plaintiffs and unscrupulous lawyers, they have been turned into the instruments of oppression and extortion.” See *Arrests in Civil Actions*, 5 ALB. L.J. 243 (1872). See also Henry C. Robinson, *Attachment of the Body Upon Civil Process*, 7 YALE L. J. 295, 295 (1897-98) (noting the “practice . . . is said to be not infrequently used by miscreants who get into the profession”).

Yet even in the 1950s, “shyster lawyers” from “small firms practicing in immigration populations” crafted their pleadings (i.e., characterizing every contract as a fraud action) to raise the threat of incarceration to the debtor. *See Ford, supra* note 33, at 45. In fact, the use of Mesne to coerce collection of debts in Michigan increased simultaneously with the adoption of a statute in 1925 restricting the use of garnishment. *Id.* at 46.

⁵⁶ Under court rules similar to Fed. R. Civ. P. 11, this type of practice would subject the plaintiff’s attorney to sanctions for signing and filing a pleading which is being presented for an “improper purpose, such as to harass . . .” and which is legally frivolous. FED. R. CIV. P. 11(b)(1), (2). The attorney would be subject to sanctions if the attorney did not make a reasonable inquiry of the facts and law before signing and presenting the offensive document. *See Simon DeBartolo Group, L.P. v. Richard E. Jacobs Group, Inc.*, 186 F.3d 157, 166 (2d. Cir. 1999). This conduct would also run afoul of rules of professional responsibility. *See, e.g.*, MODEL RULES OF PROF’L CONDUCT R. 3.1 (2002); PROFESSIONAL RESPONSIBILITY STANDARDS, RULES & STATUTES 68–69 (John S. Dzienkowski ed., 2001-2002) (noting attorneys cannot bring frivolous cause of action).

Rule 11, however, by its terms only applies to pleadings “present[ed] to the court,” and not to an oral or written threat to file a pleading. *See* FED R. CIV. P. 11(b). So, what if the unscrupulous attorney threatens a less educated debtor with filing a pleading that on its face permits Mesne? Again, that would be a matter of professional ethics, and enforcement would depend on the debtor going to the Bar, which seems unlikely under these circumstances. *See e.g.*, MODEL RULES OF PROF’L CONDUCT R. 4.1(a); PROFESSIONAL RESPONSIBILITY, *supra*, at 87-88 (noting a lawyer “shall not knowingly make a false statement of material fact to a third person...”).

⁵⁷ While Mesne appears to have disappeared from the legal landscape, it is unclear whether legal regimes still leave room for its use. *See, e.g.*, WASH. CONST. art. I, § 17 (no imprisonment for debt, “except in case of absconding debtors”). An “absconding debtor” has been defined as “one who leaves or is about to leave, the jurisdiction, or who conceals himself [to avoid process].” *Burrichter v. Cline*, 28 P. 367, 368 (Wash. 1891). *See also* COLO. CONST. art. II, § 12 (no imprisonment for debt, “unless upon refusal to deliver up his estate for benefit of his creditors in such a manner as shall be prescribed by law, or in cases of tort or where there is a strong presumption of fraud.”); ARIZ. CONST. art. II, § 18 (“no imprisonment for debt, except in cases of fraud”).

⁵⁸ *See* Westen, *supra* note 36, at 779.

⁵⁹ *See generally id.*; *Williams v. Illinois*, 399 U.S. 235, 243 (1970).

⁶⁰ *See* Westen, *supra* note 36, at 779. *See also* Note, *The Equal Protection Clause and Imprisonment of the Indigent for Nonpayment of Fines*, 64 MICH. L. REV. 938, 939 n.8 (1965–1966) (“Periodic studies of Philadelphia’s Reed Street Prison and the Baltimore County Jail between 1940 and 1950 indicated that approximately 60% of all persons imprisoned in these institutions had been committed for nonpayment of fines.”) [hereinafter Note, *Equal Protection*].

⁶¹ *See* Westen, *supra* note 36, at 780. After 449 B.C., the “Twelve Tables,” became the first known written code of Rome which put all the oral laws into written form. *Vogt, supra* note 36, at 338–39. “The laws specified the amount of compensation to be offered for various injuries and required an injured party to accept an offer of compensation.”

Westen, *supra* note 36, at 781. *See also* ANCIENT ROMAN STATUTES 10 (Clyde Pharr, ed., Allan Johnson et al., trans., University of Texas Press 1961).

⁶² *See* Westen, *supra* note 36, at 780. *See also* Exodus 21–22, in TANAKH: A NEW TRANSLATION OF THE HOLY SCRIPTURES ACCORDING TO TRADITIONAL HEBREW TEXT (The Jewish Publication Society 1985).

⁶³ *See* Westen, *supra* note 36, at 782.

⁶⁴ *Id.*

⁶⁵ William the Conqueror (ca. 1028–1087) was the Duke of Normandy. In 1066, he sailed to England, defeated the Anglo-Saxons at the Battle of Hastings, and was crowned King. *E.g.*, NEW YORK TIMES, GUIDE TO ESSENTIAL KNOWLEDGE 1069 (2004).

⁶⁶ *See* Westen, *supra* note 36, at 783.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 784.

⁷⁰ *Id.* at 784–85. *Williams*, 399 U.S. at 239 (imprisonment for nonpayment of a fine “dates back to medieval England”).

⁷¹ *See Williams*, 399 U.S. at 240; *Tate v. Short*, 401 U.S. 395, 399 (1971). *See, e.g.*, James, *supra* note 52, at 182; Note, *Equal Protection*, *supra* note 60, at 939, 946; *See also Incarceration of Indigents Unable to Pay Criminal Fines*, 84 HARV. L. REV. 46, 47–48, 51–52 (1970–71) [hereinafter *Incarceration of Indigents*].

⁷² *See supra* note 60.

⁷³ Imprisonment for criminal fines, regardless of the practical effect, has never been characterized as involving debtor's prison. Medieval English courts viewed enforcement of fines as a function of the court's contempt power. *See, e.g.*, Ford, *supra* note 33, at 26; Westen, *supra* note 36, at 806–7.

⁷⁴ The equal protection argument, raised so forcefully in 1969 by Derek A. Westen, *supra* note 36, at 796, and in 1966 in Note, *Equal Protection*, *supra* note 60, had been clearly articulated in 1881: “In the first place, no law abridging the liberty of the citizen should be permitted to remain upon the statute books of a free and enlightened people that metes out a different punishment to the poor and friendless from that imposed on others.” Arnoux, *supra* note 52.

⁷⁵ *Williams*, 399 U.S. at 242–43.

⁷⁶ *Tate*, 401 U.S. at 397–98.

⁷⁷ *See Williams*, 399 U.S. at 243; *Bearden v. Georgia*, 461 U.S. 660, 669–70 (1983) (“The State, of course, has a fundamental interest in appropriately punishing persons—rich and poor—who violate its criminal laws. A defendant's poverty in no way immunizes him from punishment.”); Westen, *supra* note 36, at 800. *Incarceration of Indigents*, *supra* note 71, at 49 (“A problem may arise, of course, if an indigent cannot pay his fine even on the installment method, since absolving him of the fine would mean that an affluent defendant would sustain a greater aggregate penalty.”). *But see Criminal Law—Alabama Raises the Rates*, *supra* note 49, at 739 (in Alabama, as part of plea bargain for which they are given a fine, indigents waive their right to later claim poverty).

⁷⁸ See *Tate*, 401 U.S. at 399-400 (court discusses various state solutions for collecting fines, other than imprisonment). See also *Incarceration of Indigents*, *supra* note 71, at 49.

⁷⁹ *Bearden*, 461 U.S. at 661-62.

⁸⁰ *Id.* at 661-63.

⁸¹ See *id.* at 661-62.

⁸² See *Williams*, 398 U.S. at 243 (“It bears emphasis that our holding does not deal with a judgment of confinement for nonpayment of a fine in the familiar pattern of alternative sentence of ‘\$30 or 30 days.’”). See also *Incarceration of Indigents*, *supra* note 71, at 52.

⁸³ See, e.g., Westin, *supra* note 36, at 786; *Incarceration of Indigents*, *supra* note 71, at 52-53.

⁸⁴ See generally GILES PLAYFAIR & DERRICK SINGTON, *CRIME, PUNISHMENT AND CURE* 101-04 (1965); Westin, *supra* note 36, at 810 (“There is evidence that the fine, if properly imposed, is an effective deterrent.”).

⁸⁵ This calculation is courtesy of my colleague from Economics and Finance, Dr. Peter Brous, who compared the Consumer Price Index (CPI) for urban areas, non-seasonally adjusted, for 1970 and 2005. Telephone Voice Mail from Peter Brous, Associate Professor of Finance, Department of Economics, Albers School of Business and Economics, Seattle University, to John Mitchell, Associate Professor of Law, Seattle University School of Law (Aug. 8, 2005).

⁸⁶ Implicit in *Williams*, 399 U.S. 235, was the assumption that imprisonment is worse than a fine. See *Incarceration of Indigents*, *supra* note 71, at 47.

⁸⁷ See, e.g., FEREBEE, *supra* note 3, at 9 (“Also the court policy of ‘pay the fine or serve the jail sentence’ became a practice for criminal traffic fines. However, this resulted in costing the city more money for the use of jail space than the amount of the original fine, which the defendant failed to pay.”).

⁸⁸ “[I]mprisonment in the Middle Ages was the least expensive of punishments because prisons were self supporting. Jailkeepers earned their living by extorting money from inmates and their relatives and friends.” Westin, *supra* note 36, at 784. *Accord* XI SIR WILLIAM SHOLSWORTH, *A HISTORY OF ENGLISH LAW* 567 (1938); MANN, *supra* note 50, at 87 (“debtors had to provide their own food, fuel, and clothing . . . or they did without.”).

⁸⁹ See BARTY-KING, *supra* note 42, at 4-5; Ford, *supra* note 33, at 40; Note, *Present Status*, *supra* note 42, at 314 n.56.

⁹⁰ As Johnson remarked of one debtor, “I can put him in [jail] any day, but that will not pay the debt.” MANN, *supra* note 50, at 29. See also James, *supra* note 52, at 148 (“Incarceration for failure to pay debts ended because it largely failed to accomplish its purpose: to force the repayment of the money owed”); Vogt, *supra* note 36, at 343 (“[I]mprisonment rarely had the effect of recovering property.”) Vogt, *supra* note 36, at 345 (“Imprisonment often failed to accomplish the desired outcome of repayment because some debtors chose to remain in prison rather than be stripped of their assets”) (footnote omitted); Ford, *supra* note 33, at 47 (“There is reason to think that creditors actually collect very few legitimate claims by the use of imprisonment.”); Coleman, *supra* note 37; Note, *Equal Protection*, *supra* note 60, at 943 (“It seems obvious that depriving the accused of his liberty could not possibly have coerced payment of a fine he

was incapable of paying, and would necessarily prevent the defendant from earning money with which to pay the fine.”).

⁹¹ See Ford, *supra* note 33, at 40; Note, *Present Status*, *supra* note 42, at 314 n.56. See also BARTY-KING, *supra* note 42, at 4-5; MANN, *supra* note 50, at 29; Arnoux, *Civil Imprisonment*, *supra* note 52 (imprisonment for debt self-defeating); Robinson, *supra* note 55, at 297 (“Attachment of the body in civil process has no justification as a method of satisfying a fair claim, either in contract or in tort. To shut a man up in prison doesn’t in any degree or to any extent pay the debt or damage.”); Westen, *supra* note 36, at 807 (“[T]he fundamental reason for abolishing imprisonment for debt is not to avoid punishing the debtor but to avoid the imprisonment which makes it impossible for him, as for the indigent criminal defendant, to earn money for the lack of which he is being imprisoned.”); Vogt, *supra* note 36, at 343–44 (“[S]ince most debtors [in the colonies] were insolvent, imprisonment only worsened their condition by piling up court and jail cost in addition to the initial fine. [In fact, the system only] burdened the community with the cost of caring for the debtor’s dependents.”).

⁹² See Ford, *supra* note 33, at 45–46; Westen, *supra*, note 36, at 794.

⁹³ See Vogt, *supra* note 36, at 344; Note, *Present Status*, *supra* note 42, at 313–15.

⁹⁴ “Imprisonment in such a case [when the defendant cannot pay a fine] is not imposed to further any penal objective of the State. It is imposed to augment the State’s revenues but obviously does not serve that purpose; the defendant cannot pay because he is indigent and his imprisonment, rather than aiding collection of the revenue, saddles the State with the cost of feeding and housing him for the period of his imprisonment.” *Tate*, 401 U.S. at 399.

See also Westen, *supra* note 36, at 788, 788 n.90 (“A state which imprisons a criminal offender for a 20 dollar fine at the rate of one day in prison for each dollar of fine not only loses the 20 dollars that probably could have been collected by other means [fn omitted] but incurs the added expense for imprisoning the offender for 20 days. Imprisonment is the most expensive of modern punishments.”) (footnotes omitted); Carrie Wood, *Connecting the Dots—Community Court System Offers Alternative Services, Not Jail*, REAL CHANGE, June 8-14, 2005, at 4 (In King Co. Washington, “Jail time for minor criminals . . . costs about \$92 a day”). See also MAXWELL, *supra* note 3, at [13] (“The King County Correctional Facility charges the City of Seattle \$121.58 per booking and \$63.54 per day in maintenance fees.”); *id.* at [37] (The total cost of jailing offenders for suspended licenses in Seattle “is \$1.2 million dollars per year.”).

⁹⁵ See Westen, *supra* note 36, at 794 n.122, citing PLAYFAIR & SINGTON, *supra* note 84, at 24–25, 27–28, 42, 105–06.

⁹⁶ U.S. CONST. amend. XIII (slavery abolished).

⁹⁷ *Equal Protection*, *supra* note 60, at 946 (“[F]ines have become an important source of government revenue.”).

⁹⁸ WASH. INFRACTION R. CTS. LIMITED JURIS. 6.2.

⁹⁹ *Id.* at 6.2(d).

¹⁰⁰ See WASH. REV. CODE § 3.46.120 (2005); WASH. REV. CODE § 3.50.100 (2005).

¹⁰¹ Mr. Jeff Hall, the Executive Director of the Board for Judicial Administration in Washington, pointed out that the Board was in the process of reviewing the complicated formula of assessments and replacing it with a higher base penalty. E-mail from Jeff

Hall, Executive Director, Board for Judicial Administration, to Kelly Kunsch, Reference Librarian, Seattle University School of Law (June 1, 2005) (on file with authors).

¹⁰² E-mail from Randy Ball, Policy Coordinator, Executive Office of the Governor of the State of Florida, Public Safety Unit, to Kelly Kunsch, Reference Librarian, Seattle University School of Law (July 22, 2005) (on file with authors). The year 2004 is Fiscal Year 2004-2005. *Id.*

¹⁰³ CITY OF SEATTLE, COMPREHENSIVE ANNUAL FINANCIAL REPORT 64 (Dec. 31, 2004).

¹⁰⁴ SCOTT D. DWYER & MARY B. DWYER, 2005 WASHINGTON STATE YEARBOOK: THE EVERGREEN STATE GOVERNMENT DIRECTORY 141 (2005).

¹⁰⁵ See GRANT COUNTY, COMBINED STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE, ALL GOVERNMENT FUND TYPES FOR THE YEAR ENDED DECEMBER 31, 2000,” *available at*

<http://www.co.grant.wa.us/auditor/Accounting/AnnualReport/annual.htm>.

¹⁰⁶ *Moore*, 91 P.3d 875. “Court revenues decreased over the past two years due to the Supreme Court ruling on driving with suspended license cases.” See, e.g., CITY OF LAKE FOREST PARK, SUSTAINABLE BUDGET POLICY PROCESS 17, *available at* <http://www.cityofflp.com/city/budget/default.html>. The graphic on the page shows a reduction from about \$340,000 in 2003 to below \$310,000 for 2004. *Id.*

¹⁰⁷ WASH. REV. CODE § 46.63.110.

¹⁰⁸

For the American male (and men elsewhere), infatuation with the automobile is loaded with sexual freight. Worship of the car begins in childhood and reaches the auto-erotic phase at the onset of puberty, when cars, like girls, are still worshipped from afar. The older adolescent readies himself for his driver’s license much as he prepares himself to lose his virginity, and so it goes until he locks himself into a union that makes no provision for divorce. Recurring bouts of vapor lock are not sufficient grounds for ending the marriage, nor will an epidemic of transmission problems justify an annulment. In a world created by the automobile, the automobile rules.

CHRISTOPHER FINCH, HIGHWAY TO HEAVEN 12 (1992). See also FLINK, AUTOMOBILE AGE, *supra* note 23, at 160-62.

¹⁰⁹ “At a practical level, the appeal of the automobile is easily described. Unlike the train, or the trolley car, or the bus, it goes where and when you want, stops where and when you want. Certainly this appeals to every American’s sense of God-given independence . . .” FINCH, *supra* note 108, at 11.

¹¹⁰ Government certification of competent driving was well established in Europe by the turn of the twentieth century. JAMES J. FLINK, AMERICA ADOPTS THE AUTOMOBILE 1895–1919, at 174 (1970) [hereinafter FLINK, AMERICA ADOPTS]. However, before 1901 U.S. states had very little to do with motor vehicles. Carl Watner, *Driver’s Licenses and Vehicle Registration in Historical Perspective*, in NATIONAL IDENTIFICATION SYSTEMS 101 (Carl Watner & Wendy McElroy eds., 2004). Rather, whatever regulation existed was imposed by the cities. For example, Chicago had a licensing law in 1898 (later declared unconstitutional) and in 1899 required the examination and licensing of all drivers. *Id.* at 102. The real impetus for licensing,

however, came from “automotive interests” in the form of the American Automobile Association and the Automobile Club of America. FLINK, AMERICA ADOPTS, *supra*, at 175; Watner, *supra*, at 104. Interestingly, safety concerns did not appear to be a central factor in the initial movement for licensing.

One thing is clear from historical record: While the justification for government licensing of automobile operators was sometimes a safety issue, in a majority of the states, driver competency examinations were not imposed until years after the initial licensing regulations were adopted. Watner, *supra*, at 103. Thus, among twelve East Coast states between January 1, 1909 and October 4, 1909, 89,495 driver's licenses were issued, and only twelve people were rejected for incompetence (ten in Vermont). FLINK, AMERICA ADOPTS, *supra*, at 178. In fact, even in the 1930s and 1940s there were states where no examination was required for a driver's license; one merely paid a fee. Watner, *supra*, at 104–05.

¹¹¹ NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, TRAFFIC SAFETY FACTS 2003, at Ch. 4 Table 34 (2003), available at <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/ITSFAnn/2003HTML/cov2.htm>.

¹¹² *Id.*

¹¹³ *Id.* at Summary (statistics include reported and unreported crashes for year 2000).

¹¹⁴ Washington State revokes licenses of “Habitual Offenders” (i.e., three major violations or twenty moving violations within a five year period, see WASH. REV. CODE § 46.65.020 (2005)). WASH. REV. CODE § 46.20.291(3) (2005). Other states have similar laws; Florida, for example, suspends licenses based upon a point system. See SCOPATZ ET AL., *supra* note 3, at 32.

¹¹⁵ It is well-established in our society that driving is considered a “privilege”, and not a “right.” See Watner, *supra* note 110, at 109.

[T]he general legal consensus is that driving is a privilege, not a right. How we reached that point remains to be explained, but the actions of the American Bar Association's National Conference of Commissioners on Uniform State Laws should not be overlooked. Started in 1889, as part of an effort to standardize state laws, the Commissioners developed a Uniform Motor Vehicle Operation and Chauffeur's License Act in 1926. This was at a time when driving was still recognized as a common law right in at least the eight states, which issued no licenses (either operator or chauffeur) at all. Thus the ABA, under its self-appointed mandate to produce uniformity [of laws] among the states, labored to license every driver in America.

Id. at 109–10. There are those, however, who contest this proposition that driving is a privilege. They maintain that access to the public roadways is a fundamental right (whether by foot, horse, cart, or car), and that while the state may set driving laws (e.g., speeding) and hold people civilly accountable for their accidents, it may not require licensing of non-commercial driving. See, e.g., Jack McLamb, *Driving A Right, Not a Privilege*, AID AND ABET NEWSLETTER, Feb. 3, 2003; see also Jack McLamb, *Driver Licensing vs. The Right to Travel*, <http://www.uslawbooks.com/travel/travel.htm> (last visited Oct. 31, 2005) [hereinafter McLamb, *Driver Licensing*]. An interesting variant asserts the rights of bicyclists vis-à-vis motorists. See Steven G. Goodridge, *The Right to*

Travel by Human Power,

<http://www.bicyclinglife.com/EffectiveAdvocacy/TheRightToTravel.htm> (last visited Oct. 31, 2005).

¹¹⁶ Similarly, while a driver's license provides good identification when required in some roadway encounter, it would seem no better than, for example, a passport (though it may be that some police computer systems are keyed to driver's license numbers, and the passport would offer a less efficient entry into their databases).

¹¹⁷ See SINGER & LAFOND, *supra* note 6, at 25 ("The alternative major explanation for punishment is *retribution*. Retribution argues that those who do wrong (i.e., criminal) acts *deserve* punishment, and that it should be imposed on them even if it serves no utilitarian purpose."); DRESSLER, *supra* note 6, at 11 ("Retributivists believe that punishment is justified when it is deserved. It is deserved when the wrongdoer freely chooses to violate society's rules.").

¹¹⁸ "General deterrence" theory "posits that punishment of a criminal . . . reduces future crime . . . [because] other persons, contemplating committing crimes and learning of the threatened punishment, will decide not to do so." SINGER & LA FOND, *supra* note 6, at 19; see also DRESSLER, *supra* note 6, at 10.

¹¹⁹ See McLamb, *Driver Licensing*, *supra* note 115, at § Regulation, Question One (stating that a driver's license is a proxy for competence).

¹²⁰ One could argue that those ticketed for moving violations (e.g., running a stop sign) who fail to accept the punishment (i.e., fine) are failing to acknowledge responsibility for their unsafe driving and therefore likely to continue driving unsafely. The problem with this argument is its major factual premise. Likely over 90% of those failing to pay traffic tickets do so not out of some sense of indifference to their actions; they want to pay their tickets—they do not pay because they do not have the money. See Interview with Mary Wolney, *supra* note 5; Interview with LaVerne Jones, *supra* note 19.

¹²¹ See MAXWELL, *supra* note 3, at [10-11]; SCOPATZ ET AL., *supra* note 3, at 16-17; David J. DeYoung et al., *Estimating the Exposure and Fatal Crash Rates of Suspended/Revoked and Unlicensed Drivers in California*, 29 ACCID. ANAL. AND PREVENTION 17 (1997).

¹²² See SCOPATZ ET AL., *supra* note 3, at 7.

¹²³ *Id.*

¹²⁴ See DeYoung et al., *supra* note 121, at 21, Table 1. See also SCOPATZ ET AL., *supra* note 3, at 55, Table A1 (showing national statistics).

¹²⁵ See DeYoung et al., *supra* note 121, at 17 (abstract), 21. See also SCOPATZ ET AL., *supra* note 3, at 8, 16-17. In general, the study showed that in California "suspended/revoked [hereinafter S/R] and unlicensed drivers are over represented in fatal crashes by about a factor of 2-5, relative to their presence on the road." De Young et al., *supra* note 121, at 19.

¹²⁶ See SCOPATZ ET AL., *supra* note 3, at 9, 20.

¹²⁷ For example, in 2003, alcohol was involved in 40% of fatal traffic accidents. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, *supra* note 111, at Ch.2 Table 34 (2003), available at <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/ITSFAnn/2003HTMLTSF/tbl34.htm>.

¹²⁸ For example, "Driving again while intoxicated after being convicted of DUI is fairly common if the person suffers from alcoholism. For the social drinker, the experience of the criminal law is so bad that the likely will never drive after drinking again. But for those with the disease, relapse is a normal part of treatment . . . [and] they probably will drive again after drinking because part of the disease is loss of control. . . . My hunch is that [even after a DUI conviction] 30-25% will drive while intoxicated." Telephone Interview with Ken Urich, Chemical Dependency Professional/Clinical Social Worker at Assessment and Treatment Associates, Bellevue, Washington, in Seattle, Wash. (Aug. 11, 2005).

¹²⁹ See SCOPATZ ET AL., *supra* note 3, at 7.

¹³⁰ *Id.* at 17.

¹³¹ *Id.* at 65. "[T]hese drivers [involved in fatal crashes across the country] tend to be young, male, more likely to have consumed alcohol before driving, more likely to have been driving all night, been recently convicted of DWI, and to have three or more suspensions or revocations." MAXWELL, *supra* note 3, at [11]. See also SCOPATZ ET AL., *supra* note 3, at 67-68 (high percentage of S/R in fatal crashes have previous DUI convictions).

¹³² SCOPATZ ET AL., *supra* note 3, at 20.

¹³³ See, e.g., MAXWELL, *supra* note 3, at [9] ("Thirty year's worth of traffic safety research has shown a correlation between license status and collisions, since drivers with suspended or revoked (S/R) licenses are at a greater risk for involvement in fatal traffic accidents.").

¹³⁴ DeYoung et al., *supra* note 121, at 18.

¹³⁵ *Id.* at 21. See also SCOPATZ ET AL., *supra* note 3, at 8 ("Their [DeYoung's group] methodology has limitations, however, most notably the need to establish the identity of the driver at fault in a fatal crash."). *But cf.* MAXWELL, *supra* note 3, at [11]. In 2000, Seattle City Attorney, Mark Sidren, testified at a sentencing guidelines hearing that in reviewing 427 traffic collisions in which "at least one driver had S/R status . . . S/R drivers were at fault 75% of the time, and that 88% of those drivers were third-degree DWLS defendants." *Id.* at [11]. Sidren did not state how many of these 427 accidents involved both drivers with S/R status. See *id.*

Also, as the California study itself identified, there could be a "negative halo" effect, with police attributing fault to one of the driver's because of their S/R status when, without the S/R, neither driver would have been found at fault and the accident would not have been included in the study. DeYoung et al., *supra* note 121, at 20.

Finally, in a high proportion of fatality accidents involving S/R drivers, the S/R drivers were riding *motorcycles*. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, *supra* note 111, at Motorcycle.

¹³⁶ See SCOPATZ ET AL., *supra* note 3, at 40, 45.

¹³⁷ See *supra* note 6.

¹³⁸ See DRESSLER, *supra* note 6, at 10. "[T]hose who commit criminal acts have rejected important social norms have thereby demonstrated their willingness to continue to do so in the future. Thus, for the good of those who abide by the law, these offenders must be prevented (incapacitated) from re-offending." SINGER & LA FOND, *supra* note 6, at 22. Some believe that during this incapacitation, incarceration should fill the function of

rehabilitation. *Id.* at 23–25. “This theory holds that offenders can be ‘changed’ into ‘non-offenders’ if given proper ‘treatment.’” *Id.* at 23.

¹³⁹ But, what if a parent must break into a pharmacy late at night to obtain medication of their very sick child, and if the parent does not burgle the pharmacy, the child will most likely die? For that, our society provides the “defense of necessity”:

“**necessity. 1.** A justification defense for a person who acts in an emergency that he or she did not create and who commits a harm that is less severe than the harm that would have occurred but for the person’s actions. For example, a mountain climber lost in a blizzard can assert necessity as a defense to theft of food and blankets from another’s cabin.—Also, termed *choice of evils; duress of circumstances; lesser-evils defense.* **2.** A privilege that may relieve a person from liability for trespass or conversion if that person, having no alternative, harms another’s property in an effort to protect life or health.”

A HANDBOOK OF CRIMINAL LAW TERMS 460-61 (Bryan A. Garner, ed. 2000).

¹⁴⁰ In America, we have made the choice to rely on the private automobile for urban mass transportation:

Urban populations may rely upon systems of mass transit, as in Moscow, Russia, or on the automobile, as in most urban areas in the United States. In Europe, governments heavily subsidize mass transit and make it expensive to drive automobiles. In the United States, a combination of public subsidies for highways and disinvestment in mass transit has resulted in a heavy reliance on the automobile. In most metropolitan areas, less than 10% of commuters use public transportation, and in most Sunbelt cities, the proportion is 5 percent or less.

Dennis R. Judd, *Cities and the Environment*, in HANDBOOK ON RESEARCH ON URBAN POLITICS AND POLICY IN THE UNITED STATES 400 (Ronald K. Vogel ed., 1997) (citations omitted).

Perhaps the larger public policy question is the role of the Automobile in American life. Legislative bodies have made and continue to make laws from the perspective that driving is privilege and not a right. There is not doubt that driving and owning a vehicle have specific legal and financial responsibilities attached thereto. However, the reality is that we are a society that relies heavily on our mobility, especially for employment and to access services for ourselves and our families. Urban areas, with high-density population centers, are generally served by rapid transit, but others, like Los Angeles or Dallas, are only just beginning to invest in public transit infrastructure. Even cities with good rapid transit systems cannot provide the level of service that many citizens must have to meet their employment and family needs. Residents in our rural areas are truly dependent on their vehicles and often have few options available for paying fines. Standardizing and expanding compliance options available throughout Washington would benefit many of our citizens.

MAXWELL, *supra* note 3, at [49-50].

¹⁴¹ See generally FINCH, *supra* note 108; FLINK, AMERICA ADOPTS, *supra* note 110; FLINK, AUTOMOBILE AGE, *supra* note 23; HOLTZ KAY, *supra* note 23.

¹⁴² See FLINK, AMERICA ADOPTS, *supra* note 110, at 50–51.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 58.

¹⁴⁵ *Id.*

¹⁴⁶ See Megan Shaw and Rick Prelinger, *Manifest Congestion: Freeway Landscapes and Timescapes*, BAD SUBJECTS, Oct., 1998, available at <http://www.eserver.org/bs/40/shaw-prelinger.html-73k>.

¹⁴⁷ See FLINK, AMERICA ADOPTS, *supra* note 110, at 58.

¹⁴⁸ See *id.* at 2. With the automobile industry also comes mass production, multidivision corporations, modern management techniques, and consumer credit. *Id.*

¹⁴⁹ See FLINK, AUTOMOBILE AGE, *supra* note 23, at 3.

¹⁵⁰ For a discussion on the creation of our highway and road system, see HOLTZ KAY, *supra* note 23, at 224–233. See also FLINK, AUTOMOBILE AGE, *supra* note 23, at 368–376.

¹⁵¹ See JAMES J. FLINK, CAR CULTURE 178 (1978) [hereinafter FLINK, CAR CULTURE].

¹⁵² Norman Rockwell (1894–1978) was an illustrator whose scenes of American life reflected the innocent and ideal aspects of our culture. *E.g.*, NEW YORK PUBLIC LIBRARY DESK REFERENCE 224 (4th ed. 2002).

¹⁵³ See FLINK, CAR CULTURE, *supra* note 151, at 178–79. See also FINCH, *supra* note 108, at 343:

After the war [WWII], wagons became even more popular, while conventional sedans began to offer more and more trunk space. Such space was still useful on long journeys, but it found regular employment in trips to the market, the hardware store and the shopping center. When cars became smaller, manufacturers made certain that they continued to offer plenty of storage space, knowing that this had become an everyday requirement. Even the smallest of the subcompacts was offered in a station-wagon format, and a novel solution to increasing carrying volume was found in the three-door or hatchback formula, which combined the looks of a sedan with some of the features of a wagon. All these developments were designed largely to enhance the automobile as a shopping tool.

In this way, the shopping environment has shaped the car, and reciprocally the car has shaped the retail environment. The original strips evolved into mercantile eco-systems in which the space allocated to parking dictated low-density development. The mall concept permitted the return to a city-style, high-density shopping experience, but it too was predicated on the automobile and hence demanded either huge lots or elaborate parking structures. Such parking structures are often handsome, in a functional way, and some are successfully integrated with the architecture of the actual shopping precinct. Often, though, the mall is sited to take advantage of low land values and hence surrounds itself with an apron of raw parking space.

¹⁵⁴ See FLINK, CAR CULTURE, *supra* note 151, at 164.

¹⁵⁵ See, e.g., STEPHEN E. AMBROSE, UNDAUNTED COURAGE: MERIWETHER LEWIS, THOMAS JEFFERSON, AND THE OPENING OF THE AMERICAN WEST (1996).

¹⁵⁶ While we are not making a constitutional claim, plainly the construct of the “freedom of locomotion” pulls a variety of constitutional threads which merit mention. “The idea of a right of locomotion is neither novel nor radical. Americans have enjoyed the freedom to walk the streets and move about the country free from unreasonable government intrusion for many years.” Tracey Maclin, *The Decline of the Right to Locomotion: The Fourth Amendment on the Streets*, 75 CORNELL L. REV. 1258, 1260 (1990).

Initially considered a “natural right” protected by the Privileges and Immunities Clause of the United States Constitution see LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 555-56 (2d ed. 1988), the right to locomotion found a home in other portions of the Constitution following the death knell of the Privileges and Immunities Clause in the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872) (case eviscerated the Privileges and Immunities Clause of the Fourteenth Amendment by holding that it only applied to rights of “national citizenship”). See also TRIBE, *supra*.

Thus, the right to interstate travel found support in both the very structure of a constitution creating a federal republic, see *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969) (one year residency requirement for welfare violates implicit guarantee in constitution that “all citizens be free to travel throughout the length and breadth of our land”), and in the Equal Protection clause, see *Dunn v. Blumstein*, 405 U.S. 330, 339-40 (1972) (“In *Shapiro*, we explicitly stated that the compelling state interest test would be triggered by ‘any classification which serves to penalize the exercise of [the right to travel] . . . ’”). The right to intrastate locomotion has found constitutional support under the Due Process Clause of the Fourteenth Amendment, see Gordon Hill, *The Use of Pre-Existing Exclusionary Zones as Probationary Conditions for Prostitution Offenses: A Call for the Sincere Application of Heightened Scrutiny*, 28 SEATTLE U. L. REV. 173, 185 (2004), and, for some, under attributes of the Fourth Amendment, see Maclin, *supra*, at 1261.

¹⁵⁷ See *supra* notes 140-41.

¹⁵⁸ See MAXWELL, *supra* note 3, at [37]. “[T]ransportation and the status of individual driver’s licenses [are] two potential barriers to employment or advancement to higher paying jobs.” *Id.* at [7]. See also HOTLZ KAY, *supra* note 23, at 39:

Red Hook’s isolation has given it a perverse ‘end-of-Western-civilization’ chic to the artists and activists attracted to its warehouses. Nonetheless, working life for the old residents is an oppressive circle. The highways that destroyed the neighborhood caused its emptying. The emptying produced low density, which undercut public transportation and kept income down. The low-income inhabitants lack money to buy a car and hence find work, and, thus, the neighborhood deteriorates further. It is a cycle. A few years ago, Kassinitz conducted a survey at the South Brooklyn Local Development Corporation, an employment agency interviewing out-of-work community members applying for jobs. Three hundred people came looking for work, but only 9 percent of the adults had driver’s licenses. ‘Here’s a place that hires a lot of truck drivers and this agency couldn’t place them.’

¹⁵⁹ See Interview with Mary Wolney, *supra* note 5.

¹⁶⁰ See *supra* note 115.

¹⁶¹ Again, such futility has accompanied every attempt to coerce revenue from the poor throughout history. See *supra* notes 88-96 and accompanying text.

¹⁶² MAXWELL, *supra* note 3, at [19-20] (emphasis added) (citations omitted).

¹⁶³ "A valid driver's license is frequently one of the most important assets that an unemployed individual has." *Id.* at [39]. A study of the impact of driver's license revocation in Wisconsin thus found:

As in many parts of the country, many of Milwaukee's jobs have left or are leaving the downtown core area and moving to the suburbs and other outlying areas, some of which have limited public transportation service. Combined, job location, bus schedules, and child care requirements make having a car and a valid driver's license critical to job retention. Suspended [driver's] license holders who need their jobs to pay off their fines may find it difficult to retain those jobs, especially if they require a valid driver's license.

Research from the University of Wisconsin at Milwaukee indicates that the two greatest barriers to the employment or better employment are transportation and childcare. They are, of course, often linked: transportation plays an essential role in delivering children to affordable childcare centers and then taking the parents to the workplace. This is especially critical for single parents (mostly female), who are the special focus of many programs designed to help people make a transition from welfare to work.

Id. at [39-41].

¹⁶⁴ "Work provides a person in this culture with an identity. 'I'm a nurse' has a cultural moral overlay that I can see myself as 'worthy' (as opposed to being a sponger) in that I'm contributing to society, provides the feeling of being 'productive' so valued in our culture, and (especially for women) economic independence." Telephone Interview with Dr. Ruth White, Program Director of Social Services, Seattle University, in Seattle, Wash. (Sept. 8, 2005).

¹⁶⁵ Vehicle impoundment, one proposed "solution" to keeping S/R drivers off the road, has only compounded the misery of drivers suspended for nonpayment of fines. Impoundment of cars driven by those whose licenses were revoked for DUI, or other safety-related causes is an effective way to keep these drivers off the road. See SCOPATZ ET AL., *supra* note 3, at 19-21. See also MAXWELL, *supra* note 3, at [6], [19-25]. In the Seattle impound program, however, 85% of the cars impounded were for drivers whose license had been suspended for nonpayment of fines. See *id.* at 27]. Further, the impoundments had a strong racial bias. "According to the data collected in 1999, more than 40% of the approximately 5,000 cars impounded for DWLS violations were driven or owned by African-Americans, who overall comprise 11% of the Seattle population . . ." *Id.* at [28]. We think that the consequences of taking the vehicle, which is frequently the single most valuable asset of a poor or low-income person, from someone who cannot even afford to pay their fines are obvious. Impoundment can also lead to ripples of incredible injustice, as shown by the following story related to me by Mary Wolney. See Interview with Mary Wolney, *supra* note 5:

While in the hospital for kidney problems, the client's friend borrowed his car without his knowledge. The friend, who had his driver's license suspended for nonpayment of fines was stopped by the police, and when his DWLS3 status was discovered the car was impounded. (The impound ordinance let police impound any car driven by a suspended driver, regardless of the registered owner.) By the time the client got out of the hospital, five days of storage charges (at \$30 per day) had been added to the several hundred dollars of impound charges. When he told the towing company that he could not pay, and they should just sell his car for what he owed, he was told that statutory requirements for auction of the vehicle by a towing company involved a process that would take thirty days. At the end of the thirty days, a month's storage costs had pushed his tab well over \$1,000. After his car was auctioned for \$200, the towing company assigned the balance to a collection agency.

¹⁶⁶ Some have suggested that fines be "proportioned" by income, with fines reflecting current bail reports or public defender eligibility reports. *See, e.g.*, CLIVE HAMILTON, THE AUSTL. INSTITUTE, MAKING FINES FAIRER (2004); *Australia Should Change System of Traffic Fines: Think Tank*, AUSTL. ASSOCIATED PRESS NEWSFEED, Jan. 16, 2005 (Domestic News); Westen, *supra* note 36, at 812. In theory, lower fines for the poor would make it more likely that they could pay the fine and avoid a license suspension.

¹⁶⁷ *See* FEREBEE, *supra* note 3, at 5, 30-31. *See also* Westen, *supra* note 36, at 816. In collecting payments, some courts are trying to incorporate the use of credit cards and even the internet. FEREBEE, *supra* note 3, at 5, 8, 43

¹⁶⁸ *See Tate*, 401 U.S. at 400 n.5.

¹⁶⁹ Westen, *supra* note 36, at 819-20.

¹⁷⁰ *See* MAXWELL, *supra* note 3, at [30] (there are "people who simply forgot about the court appearance or fine and had their [driver's] licenses suspended because of honest or careless oversight").

¹⁷¹ *See* Interview with LaVerne Jones, *supra* note 19 (clients are always moving around; those who came from out of state will go back for periods of time without notifying the agency; they also may not have regular phone service).

¹⁷² *See* FEREBEE, *supra* note 3, at 30.

¹⁷³ *See* Boruchowitz, *Right to Counsel*, *supra* note 17, at 29; MAXWELL, *supra* note 3, at [32]; Interview with Mary Wolney, *supra* note 5.

¹⁷⁴ *See* MAXWELL, *supra* note 3, at [37-39]. *See also* Interview with LaVerne Jones, *supra* note 19. In a study, those in the CAMP program had an eleven-fold decrease in DWLS3^o convictions, compared to a three-fold decrease in the control group, and thirty-nine times the collection rate than the control group. MAXWELL, *supra* note 3, at [42-46].

¹⁷⁵ *See* Interview with LaVerne Jones, *supra* note 19.

¹⁷⁶ *See* Interview with Mary Wolney, *supra* note 5.

¹⁷⁷ *Id.*. While the new Washington statute generally mandates payment plans similar to these court programs, *see supra* note 14, the plan also contains similar obstacles for the low-income or poor defendant. Failure to make a payment results in a driver's license suspension (absent a court finding of "good cause," which as a practical matter presupposes the defendant receiving notice of the hearing and appearing). WASH. REV. CODE § 46.63.110(6)(a). Also, while administrative costs for the court payment program

are low (\$10/infracton or \$25 for the payment plan, whichever is less), *id.* § 46.63.110(6)(c), the rule permits the court to “contract[] with outside entities” to administer the payment plan, *id.* § 46.63.110(6)(d). That means collection agencies and the costs and fees associated with that private enterprise already discussed.

¹⁷⁸ Telephone Interview with John Boquist, Vice President, Alliance One Collection Agency, in Seattle, Wash. (Aug. 17, 2005).

¹⁷⁹ See WASH. REV. CODE § 46.63.110.

¹⁸⁰ Interview with LaVerne Jones, *supra* note 19.

¹⁸¹ Telephone Interview with Eileen Kato, Judge, Seattle District Court, in Seattle, Wash. (Sept. 4, 2005).

¹⁸² See *supra* notes 173-76 and accompanying text. The new Washington statute, see *supra* note 11, provides that community service can substitute for cash payment of fines as part of an installment plan. WASH. REV. CODE § 46.63.110(6)(e).

¹⁸³ See *supra* note 171.

¹⁸⁴ See FEREBEE, *supra* note 3, at 34-35. See also *supra* note 12.

¹⁸⁵ See FEREBEE, *supra* note 3, at 59.

¹⁸⁶ See *supra* note 171.

¹⁸⁷ In the State of Washington, these additional fees can be up to 50% of the outstanding fines. See *supra* note 12.

¹⁸⁸ See Interview with Mary Wolney, *supra* note 5; see also Interview with John Boquist, *supra* note 178.

¹⁸⁹ See Interview with Mary Wolney, *supra* note 5. However, some courts have agreements with the collection agency so that the repayment plan only includes the traffic fine and fees. *Id.*

¹⁹⁰ See Interview with LaVerne Jones, *supra* note 19.

¹⁹¹ In MAXWELL, *supra* note 3, at [30], the Report noted three categories of DWLS3^o defendants. The first is “[t]he can nots: individuals who are disorganized in many aspects of their lives, and who consider a ticket or a court date as one more overwhelming event.” The Report went on to state:

While no statistics are available regarding the composition of suspended drivers, a large amount of continually evolving anecdotal evidence states that most fall into the first category. “Can nots” are people who are easily overwhelmed by what others consider basic tasks. For them, the idea of avoiding payments and court appearances results in harsher penalties is difficult to comprehend or accept. They view courts and bureaucracies in general as formidable obstacles that cannot be dealt with easily or effectively. As a result, many members of this group are unable to find or hold jobs, or to perform such simple tasks as obtaining auto insurance.

Id. at [31].

¹⁹² LAWRENCE SHULMAN, THE SKILLS OF HELPING INDIVIDUALS, FAMILIES, GROUPS, AND COMMUNITIES 714 (6th ed. 1999).

As is often the case, the very institutions set up to solve problems became so complex themselves that new problems were generated. Social, medical, and educational systems can be difficult to negotiate even for individuals who are

well equipped to deal with them, let alone those with limited education and resources. The services established for people are often so complex that it is difficult for individuals to make use of them. . . . A third factor contributing to breakdowns in the individual-system relationship is the size of a bureaucracy. For example, finding the right department in a large government agency can be a frustrating, even overwhelming, task.

Id.

¹⁹³ *Id.*

¹⁹⁴ William J. Reid & Elizabeth Misener, *Adult Change*, in THE HANDBOOK OF SOCIAL WORK DIRECT PRACTICE 246 (Paula Allen-Meares & Charles Garvin eds., 2000).

¹⁹⁵ *Id.* (citations omitted).

¹⁹⁶ See, e.g., Peter De Jong & Scott D. Miller, *How to Interview for Client Strengths*, 40 SOCIAL WORK 729 (1995).

¹⁹⁷ Telephone interview with Mary Kay Brennan, Clinical Assistant Professor and Field Director for Social Work, Seattle University, in Seattle, Wash. (Aug. 29, 2005). See also Céline Mercier & Guylaine Racine, *Case Management with Homeless Women: A Descriptive Study*, 31 COMMUN. MENTAL HEALTH J. 25, 25-27 (1995); Nancy Wolff et al., *Cost Effectiveness Evaluation of Three Approaches to Case Management for Homeless Mentally Ill Clients*, 154 AM. J. PSYCHIATRY 341 (1997).

¹⁹⁸ FOUNDATIONS OF SOCIAL WORK PRACTICE: A GRADUATE TEXT 179-80 (Mark A. Mattaini et al. eds., 3d ed. 2002).

¹⁹⁹ Beulah R. Compton & Burt Galaway, *Interview Methods to Mobilize Client Power*, in SOCIAL WORK PROCESSES 343-44 (Brooks/Cole Publ'g Co., 6th ed. 1999) (citations omitted).

²⁰⁰ See Boruchowitz, *Right to Counsel*, *supra* note 17, at 27 (“Another alternative would be to decriminalize some minor offenses, including DWLS3 for people whose driver’s licenses are suspended only for failing to pay tickets.”). In fact, at a King County Regional Justice Summit in 2003, decriminalization was on the agenda. *Id.*

²⁰¹ An issue arises regarding the common failure of low-income and poor drivers who fail to have insurance. While not the focus of this article, we recognize that it is a significant issue in its own right, both because of the magnitude of the fines and because some may contend that you should not drive without insurance, and you should be denied a license if you persist in driving without insurance (as opposed to losing your license just for not paying a fine).

²⁰² See Interview with Mary Wolney, *supra* note 5.

²⁰³ See Interview with Mary Wolney, *supra* note 5. See also Interview with LaVerne Jones, *supra* note 19. Cf. MAXWELL, *supra* note 3, at [30-31] (court found suspended drivers generally fit in one of three categories: “The Can Nots,” “The Did Nots,” and “The Will Nots”—“Scofflaws who intentionally avoid paying fines or appearing in court”). The majority of those suspended for nonpayment fell into the first category. *Id.* at [31].

²⁰⁴ If we do not revoke driver’s licenses when people fail to pay tickets, questions arise of what to do about the unpaid fines at the point the person goes to the DOL to renew their driver’s license. We would propose that they go to a specially designated DOL center where a specialist helps them work out a payment plan (backed by reasonable

enforcement mechanisms). Alternatively, violators could fill out an affidavit of indigency, reacquire their driver's license, and the state could seek enforcement of fines through other enforcement methods discussed.

²⁰⁵ One superficial impediment to not revoking driver's licenses for nonpayment is the Non-Resident Violation Compact. WASH. REV. Code § 46.23.010 (Art. IV(a)) (2005). In the past, an out-of-state driver stopped for a traffic violation would be hurried in front of a court or thrown in jail because, otherwise, the jurisdiction knew that the driver would drive back home and they would never get payment of the fine. The Compact avoids this vacationer's nightmare by agreeing that if our resident gets an out-of-state ticket, payment on that ticket will be enforced by the home state. The problem is that under the Compact the remedy for nonpayment of your out-of-state ticket is suspension of your driver's license by your home state. Why this is the sole remedy, instead of the home state agreeing to indemnify the foreign state and then using any method they choose to get the ticket paid, seems a mystery. Yet, in any event, being a signatory on the Compact would, at most, mean that those who fail to pay out-of-state tickets, (only a small percentage of those revoked for nonpayment), will have their driver's licenses suspended. See Interview with Mary Wolney, *supra* note 5. Given that driving an automobile is not even considered a "right," (*see supra* note 115) minimum scrutiny equal protection analysis will apply, Fed. Commc'ns Comm'n v. Beach Commc'ns, Inc., 508 U.S. 307 (1993), and the distinction between revoking the driver's licenses of those whose tickets are out of state, and not those who are in state, will pass constitutional muster because under a rational basis analysis, there is a "strong presumption of validity," the challenger must "negative every conceivable basis which might support it," and the supporting rational may rely entirely on "rational speculation unsupported by evidence or empirical data." *Beach Commc'ns*, 508 U.S. at 314-15.