Civil Procedure

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Civil Procedure

Cases and Problems

Seventh Edition

The late Barbara Allen Babcock
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Stanford Law School

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For Barbara, in loving memory.

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Preface

The famous legal realist Karl Llewellyn once observed that law can be really known only "through the spectacles of procedure." This casebook is designed to help you learn this new way of seeing. Sometimes, as in the first case, the effect of procedure on substantive rights is glaringly obvious—a creditor attempts to use a procedure called "garnishment" to seize the wages of Ms. Sniadach *before* the creditor has proved in court that the debt is owed. In other instances, the connection between procedural and substantive law is more subtle. But Llewellyn was right. You will soon begin to see this connection and the power of procedural rules everywhere. That is in no small part because the rule of law itself is dependent on due process of law—no theory of rights or justice can be established or sustained without fair, transparent, participatory, and affordable rules for the resolution of disputes.

From the very first edition of this casebook, we have selected cases that reveal the power of procedure in the lives of ordinary Americans, especially those for whom access to law has not come easily. Struggles for civil rights and civil liberties—for the full legal recognition of women, minorities and other disenfranchised groups in American society—a re always also procedural in nature. Any discussion of procedural design in a democratic society must, we believe, include the experiences of ordinary people who come before the courts, and in a society riven by racial injustice and other forms of subordination, the voices of marginalized people need to be heard. Procedures for fair hearings, we will learn, depend for legitimacy on creating meaningful opportunities to be heard. It is no accident that the connection between substance and procedure is most vivid in these cases as well.

This casebook also sets critiques of the modern adversary system alongside praise songs for the noble service profession you are training to enter. On the one hand, the cost and delay of litigation have been a constant source of popular frustration with the adversary system, with much of the blame directed at the legal profession. Many important reform movements have tapped into that popular frustration or sought to check it. On the other hand, at critical moments in the history of our nation, courageous lawyers have stepped forward to defend due process of law and other democratic values. Stress tests of the adversary system and the power of the profession are abundant. In 2017, for example, lawyers worked on the 'travel bans' of the last administration and rushed to airports all around the country to provide free legal help to families caught up in it. Lawyers worked both to challenge the 2020 election and to defend in court the integrity of votes cast all around the country.

As you begin the study of procedure, consider what assumptions about professionalism are embedded in the rules governing litigation—and ask yourself what choices you would have made as counsel for the parties in the cases you will read. We will read about lawyers who are sanctioned for misconduct and other examples of procedural abuse of the adversary system. The book encourages you to think about why boundaries must be set on how the power of the profession is used in an adversary system.

These questions about dispute resolution systems and professional power take on special significance in this turbulent and challenging moment. As the Seventh Edition goes to press, the country remains in the grip of a devastating pandemic, with the disproportionate burden of disease, hospitalization and death suffered by communities of color. The second economic crisis in a decade has caused mass unemployment, made millions of Americans more vulnerable, and crippled the budgets of state court systems. Powerful movements against the harassment of women and anti-Black police violence are addressed, not just to society at large, but to the way courts adjudicate these claims. And Americans are seeking to recover from a divisive election and a disgraceful, violent attempt to disrupt the constitutional process of certifying electoral votes.

The importance of fair, accessible procedures for peaceful dispute resolution has never been more apparent. So we begin in Chapter 1 with the enduring values that define procedural law: the belief in the power of rules to constrain government decision makers and fellow citizens; the commitment to equal access to law; the need for efficiency and rationality in dispute resolution; the peculiarly American zest for adversarial exchange; and the belief in meaningful participation in decisions affecting one's substantive legal rights.

With this grounding in procedural first principles, we turn to doctrines defining the power of courts over the parties and subject matter of a dispute ("jurisdiction"). Subsequent chapters provide a survey of each stage of the modern litigation process: the rules governing the initial filings that notify the court and litigation opponents of the nature of the controversy ("pleading"); the rules governing the exchange of information relevant to the dispute ("discovery"); techniques for disposing of a case before trial (settlement and "summary judgment"); the balance of power between a judge and jury during trial; the management of complex litigation; and finally, doctrines that define the finality of a judgment ("repose" or "preclusion").

Over the past two decades, the Supreme Court has been particularly active in the area of procedure. It has modified the litigation landscape in a series of important decisions regarding jurisdiction, venue, pleading, the certification of class actions, and summary judgment. The Court has narrowed the number of fora in which a dispute may be litigated and intervened in new and surprising ways to enhance the power of judges to dispose of cases early in litigation. It also has upheld contractual provisions requiring consumers and employees forgo litigation and submit their disputes to private resolution through arbitration. These developments have

sharpened an already precipitous decline in both the number of civil cases filed, as well as the smaller subset that go to trial. And yet both bench and bar seem, as much as ever, to rely on jury trial for the model and measure of due process of law.

Throughout, we have emphasized the practical consequences of these procedural changes, as well as the relationship between procedural rules and both ethical and social understandings of the lawyering role. For example, the material on discovery (Chapter 3) explores the policy debates surrounding successive amendments to Rule 26, as well as practical matters involving digital data, metadata, new means of storage and recovery, and other technological advances that have revolutionized modern discovery practice. We have retained coverage of cases and readings on Rule 11 sanctions and sanctions in discovery practice, in order to prompt reflection on ethical standards of practice and what it means to be committed to an adversary system. And we have added new material on multidistrict litigation, which now constitutes nearly half the federal civil docket. Finally, we have added to and updated the "problem cases" that anchor each unit of study. These offer context in which to situate and grasp the doctrine and acclimate to the issue-spotting style of law school exam writing well before the end of the term.

For the new edition, invaluable assistance with research was provided by a cadre of dedicated students at Stanford Law School: Azeezat Adenike Adeleke, Matt O. Dhaiti, Ana Cutts Dougherty, Alexandra Minsk, Alexandra O'Keefe, Ariella Park, and Hannah Schwartz. We are *deeply* indebted to them for their hard work, keen editorial insights, and enthusiasm in every phase of production. Ms. Park and Ms. Schwartz were instrumental from the very earliest planning and research phases of the new edition. Ginny Smith provided invaluable, prompt, and highly professional administrative support. We are grateful as well to the fine editors at Aspen Publishing for assistance with the new edition and to Tom Daughhetee and his team for outstanding assistance with production.

We are also grateful to our fellow procedure teachers who have been so generous over the years with comments, ideas, and suggestions to improve the casebook. The book is better for it and the joys of teaching the subject have been amplified by our lively engagement with those who share our passion for procedure. We credit the wisdom of our intellectual mentor, Paul Carrington, who inspired the approach that we embrace in this book.

Finally, for being so much more than a mentor, we are profoundly grateful to our dear co-author Barbara, who passed away in 2020 as this edition was in production. This book is dedicated to her remarkable life as a pioneering woman lawyer. In its pages, her passion and clarity of vision continue to resonate. Barbara began the project of creating a "due process"-oriented approach to teaching civil procedure many years ago, fueled by her belief that we have much to learn from communities whose stories are missing or misrepresented in the canon. She was a visionary in creating an inclusive classroom, insisting that the facts of procedure cases matter because that is where the real stories of the law take place, and

she was an exceptional trial lawyer who believed the adversary system is a genuine democratic achievement worth celebrating even as each new generation seeks to improve it. Her unstinting optimism, sense of humor, and creativity in the face of all obstacles are a welcome reminder of what is required to forge a more just legal system and society.

Toni Massaro
Norman Spaulding
Myriam Gilles

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Civil Procedure

1 *Due Process of Law*

A. NOTICE AND THE OPPORTUNITY TO BE HEARD

Problem Case: The Due Process Game

In your second week of law school, you find a letter from the President of the University in your mailbox. On official letterhead, it reads:

> You have been accused of a serious Honor Code violation. Please discontinue class attendance immediately and make arrangements to leave campus.

What further information would you want from the University? What procedures would you expect? What kind of hearing would you seek? Would you want someone else to speak for you? What sort of decision maker would you desire? What rights would you assume? Are your assumptions about rights dependent on whether you are innocent or guilty of the violation? On the severity of the penalty?

Most Americans, especially law students, will construct an elaborate model for deciding whether there was an Honor Code violation and what penalty should apply. A sense of the process due, of how facts should be found, and what results should follow is part of both the legal culture and the larger culture of our society.

Due process, both as aspiration and as method, is at the heart of our study of civil procedure. Rules, statutes, and formal and informal decision making must all meet a due process standard. The U.S. Supreme Court has spoken on the subject in many settings. Sometimes, the process due is only what the legislature says must be done before the government takes property or liberty.

Even then, however, the government must notify the persons affected and afford them some chance to "tell the other side." How much notice, what kind of hearing — these are the due process questions. Here is a recent Supreme Court case on due process, followed by interpretive and explanatory notes. This first section introduces the core of our study and our method in this book. Each unit starts with a problem case, followed by cases and materials for solving it. In reading these, think about the problem case; how does the doctrine fit with your intuitions about due process?

1. The Process Due: Of Context and Subtext

Our first case begins with Christine Sniadach. She allegedly owed a bill for some eyeglasses. Her optometrist hired a collection agency, whose lawyer filed suit demanding the money. The court issued a preliminary order directing Ms. Sniadach's employer to withhold part of her weekly wage of $63.18, so that there would be a pool of money from which to pay a judgment against her. The procedure that allowed the collection agency to seize part of Ms. Sniadach's wages at the very beginning of the suit is called a garnishment action.

Ms. Sniadach never had a chance to contest the order before it was sent to her employer. Represented by the legal arm of the National Association for the Advancement of Colored People (NAACP), Ms. Sniadach took her case to the Supreme Court, arguing that wage garnishment, as practiced in Wisconsin and many other states, denied the debtor due process of law.

The case is short and concerns what may seem to be a minor aspect of debtor-creditor litigation procedure, but it is credited as sparking a revolution in procedural due process. As you read the case, think about the factors that make Sniadach's situation appealing as a test case. And think about why garnishment poses a due process problem at all.

Sniadach v. Family Finance Corp.
395 U.S. 337 (1969)

Mr. Justice Douglas delivered the opinion of the Court.

Respondents instituted a garnishment action against petitioner as defendant and Miller Harris Instrument Co., her employer, as garnishee. The complaint alleged a claim of $420 on a promissory note. The garnishee filed its answer stating it had wages of $63.18 under its control earned by petitioner and unpaid, and that it would pay one-half to petitioner as a subsistence allowance[1] and hold the other half subject to the order of the court.

Petitioner moved that the garnishment proceedings be dismissed for failure to satisfy the due process requirements of the Fourteenth Amendment.

1. Wis. Stat. § 267.18(2)(a) provides:

> When wages or salary are the subject of garnishment action, the garnishee shall pay over to the principal defendant on the date when such wages or salary would normally be payable a subsistence allowance, out of the wages or salary then owing in the sum of $25 in the case of an individual without dependents or $40 in the case of an individual with dependents; but in no event in excess of 50 per cent of the wages or salary owing. Said subsistence allowance shall be applied to the first wages or salary earned in the period subject to said garnishment action.

The Wisconsin Supreme Court sustained the lower state court in approving the procedure. The case is here on a petition for a writ of certiorari.*

The Wisconsin statute gives a plaintiff 10 days in which to serve the summons and complaint on the defendant after service on the garnishee. In this case petitioner was served the same day as the garnishee. She nonetheless claims that the Wisconsin garnishment procedure violates that due process required by the Fourteenth Amendment, in that notice and an opportunity to be heard are not given before the *in rem* seizure of the wages. What happens in Wisconsin is that the clerk of the court issues the summons at the request of the creditor's lawyer; and it is the latter who by serving the garnishee sets in motion the machinery whereby the wages are frozen. They may, it is true, be unfrozen if the trial of the main suit is ever had and the wage earner wins on the merits. But in the interim the wage earner is deprived of his enjoyment of earned wages without any opportunity to be heard and to tender any defense he may have, whether it be fraud or otherwise.

Such summary procedure may well meet the requirements of due process in extraordinary situations. Cf. Fahey v. Mallonee, 332 U.S. 245, 253-254 [(1947)]; Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594, 598-600 [(1950)]; Ownbey v. Morgan, 256 U.S. 94, 110-112 [(1921)]; Coffin Bros. & Co. v. Bennett, 277 U.S. 29, 31 [(1928)]. But in the present case no situation requiring special protection to a state or creditor interest is presented by the facts; nor is the Wisconsin statute narrowly drawn to meet any such unusual condition. Petitioner was a resident of this Wisconsin community and *in personam* jurisdiction was readily obtainable.

The question is not whether the Wisconsin law is a wise law or unwise law. Our concern is not what philosophy Wisconsin should or should not embrace. We do not sit as a super-legislative body. In this case the sole question is whether there has been a taking of property without that procedural due process that is required by the Fourteenth Amendment. We have dealt over and over again with the question of what constitutes 'the right to be heard' (Schroeder v. New York, 371 U.S. 208, 212 [(1962)]) within the meaning of procedural due process. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 [(1950)]. In the latter case we said that the right to be heard "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." 339 U.S., at 314. In the context of this case the question is whether the interim freezing of the wages without a chance to be heard violates procedural due process.

A procedural rule that may satisfy due process for attachments in general, see McKay v. McInnes, 279 U.S. 820 [(1929)], does not necessarily satisfy procedural due process in every case. The fact that a procedure would pass muster under a feudal regime does not mean it gives necessary protection

* [This is the discretionary writ that the Supreme Court issues when it decides it will accept an appeal.—Eds.]

to all property in its modern forms. We deal here with wages—a specialized type of property presenting distinct problems in our economic system. We turn then to the nature of that property and problems of procedural due process.

A prejudgment garnishment of the Wisconsin type is a taking which may impose tremendous hardship on wage earners with families to support.

Until a recent Act of Congress,[4] Section 304 of which forbids discharge of employees on the ground that their wages have been garnished, garnishment often meant the loss of a job. Over and beyond that was the great drain on family income. As stated by Congressman Reuss:[5]

> The idea of wage garnishment in advance of judgment, of trustee process, of wage attachment, or whatever it is called is a most inhuman doctrine. It compels the wage earner, trying to keep his family together, to be driven below the poverty level.

Recent investigations of the problem have disclosed the grave injustices made possible by prejudgment garnishment whereby the sole opportunity to be heard comes after the taking. Congressman Sullivan, Chairman of the House Subcommittee on Consumer Affairs who held extensive hearings on this and related problems stated:

> What we know from our study of this problem is that in a vast number of cases the debt is a fraudulent one, saddled on a poor ignorant person who is trapped in an easy credit nightmare, in which he is charged double for something he could not pay for even if the proper price was called for, and then hounded into giving up his pound of flesh, and being fired besides. 114 Cong. Rec. 1832.

The leverage of the creditor on the wage earner is enormous. The creditor tenders not only the original debt but the "collection fees" incurred by his attorneys in the garnishment proceedings:

> The debtor whose wages are tied up by a writ of garnishment, and who is usually in need of money, is in no position to resist demands for collection fees. If the debt is small, the debtor will be under considerable pressure to pay the debt and collection charges in order to get his wages back. If the debt is large, he will often sign a new contract of 'payment schedule' which incorporates these additional charges.[6]

4. [The Consumer Credit Protection Act of 1968,] 82 Stat. 146, Act of May 29, 1968.

5. 114 Cong. Rec. 1832.

6. Comment, Wage Garnishment in Washington — An Empirical Study, 43 Wash. L. Rev. 743, 753 (1968). And see Comment, Wage Garnishment as a Collection Device, 1967 Wis. L. Rev. 759.

Apart from those collateral consequences, it appears that in Wisconsin the statutory exemption granted the wage earner[7] is "generally insufficient to support the debtor for any one week."[8]

The result is that a prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage earning family to the wall.[9] Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing this prejudgment garnishment procedure violates the fundamental principles of due process.

Reversed.

Mr. Justice Harlan, concurring.

Particularly in light of my Brother Black's dissent, I think it not amiss for me to make explicit the precise basis on which I join the Court's opinion. The "property" of which petitioner has been deprived is the use of the garnished portion of her wages during the interim period between the garnishment and the culmination of the main suit. Since this deprivation cannot be characterized as *de minimis*, she must be accorded the usual requisites of procedural due process: notice and a prior hearing. . . .

From my standpoint, I do not consider that the requirements of "notice" and "hearing" are satisfied by the fact that the petitioner was advised of the garnishment simultaneously with the garnishee, or by the fact that she will not permanently lose the garnished property until after a plenary adverse adjudication of the underlying claim against her, or by the fact that relief from the garnishment may have been available in the interim under less than clear circumstances. . . . Apart from special situations, some of which are referred to in this Court's opinion, I think that due process is afforded only by the kinds of "notice" and "hearing" which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property or its unrestricted use. I think this is the thrust of the past cases in this Court. See, e.g., Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). . . .

Mr. Justice Black, dissenting.

The Court here holds unconstitutional a Wisconsin statute permitting garnishment before a judgment has been obtained against the principal debtor. The law, however, requires that notice be given to the principal debtor and authorizes him to present all of his legal defenses at the regular

7. See n. 1, supra.

8. Comment, Wage Garnishment as a Collection Device, 1967 Wis. L. Rev. 759, 767.

9. "For a poor man — and whoever heard of the wage of the affluent being attached? — to lose part of his salary often means his family will go without the essentials. No man sits by while his family goes hungry or without heat. He either files for consumer bankruptcy and tries to begin again, or just quits his job and goes on relief. Where is the equity, the common sense, in such a process?" Congressman Gonzales, 114 Cong. Rec. 1833. For the impact of garnishment on personal bankruptcies see H.R. Rep. No. 1040, 90th Cong., 1st Sess., 20-21.

hearing and trial of the case. The Wisconsin law is said to violate the "fundamental principles of due process." Of course the Due Process Clause of the Fourteenth Amendment contains no words that indicate that this Court has power to play so fast and loose with state laws. The arguments the Court makes to reach what I consider to be its unconstitutional conclusion, however, show why it strikes down this state law. It is because it considers a garnishment law of this kind to be bad state policy, a judgment I think the state legislature, not this Court, has power to make. The Court shows it believes the garnishment policy to be a "most inhuman doctrine"; that it "compels the wage earner, trying to keep his family together, to be driven below the poverty level". . . .

The foregoing emotional rhetoric might be very appropriate for Congressmen to make against some phases of garnishment laws. Indeed, the quoted statements were made by Congressmen during a debate over a proposed federal garnishment law. The arguments would also be appropriate for Wisconsin's legislators to make against that State's garnishment laws. But made in a Court opinion, holding Wisconsin's law unconstitutional, they amount to what I believe to be a plain, judicial usurpation of state legislative power to decide what the State's laws shall be. . . . The Court thus steps back into the due process philosophy which brought on President Roosevelt's Court fight. Arguments can be made for outlawing loan sharks and installment sales companies but such decisions, I think, should be made by state and federal legislators, and not by this Court. . . .

Every argument implicit in . . . my Brother Harlan's views has been, in my judgment, satisfactorily answered in the opinion of the Supreme Court of Wisconsin in this case—an outstanding opinion on constitutional law. That opinion shows that petitioner was not required to wait until the "culmination of the main suit," that is, the suit between the creditor and the petitioner. In fact the case now before us was not a final determination of the merits of that controversy but was, in accordance with well-established state court procedure, the result of a motion made by the petitioner to dismiss the garnishment proceedings. With reference to my Brother Harlan's statement that petitioner's deprivation could not be characterized as *de minimis*, it is pertinent to note that the garnishment was served on her and her employer on the same day, November 21, 1966; that she, without waiting for a trial on the merits filed a motion to dismiss the garnishment on December 23, 1966, which motion was denied by the Circuit Court on April 18, 1967; and that it is that judgment which is before us today. The amount of her wages held up by the garnishment was $31.59. The amount of interest on the wages withheld even if computed at 10% annually would have been about $3. Whether that would be classified as *de minimis* I do not know and in fact it is not material to know for the decision of this case. . . .

The indebtedness of petitioner was evidenced by a promissory note, but petitioner's affidavit in support of the motion to dismiss, according to the Wisconsin Supreme Court contained no allegation that she is not indebted thereon to the plaintiff. Of course if it had alleged that, or if it had shown in some other way that this was not a good-faith lawsuit against her, the

Wisconsin opinion shows that this could have disposed of the whole case on the summary motion.

Another ground of unconstitutionality, according to the state court, was that the Act permitted a defendant to post a bond and secure the release of garnished property and that this provision denied equal protection of the law "to persons of low income." With reference to this ground, the Wisconsin court said:

> Appellant has made no showing that she is a person of low income and unable to post a bond. 37 Wis. 2d, at 167.

Another ground of unconstitutionality urged was that since many employers discharged garnished employees for being unreliable, the law threatened the gainful employment of many wage earners. This contention the Supreme Court of Wisconsin satisfactorily answered by saying that petitioner had "made no showing that her own employer reacted in this manner."

. . .

The state court . . . pointed out that the garnishment proceedings did not involve "any final determination of the title to a defendant's property, but merely preserve(d) the status quo thereof pending determination of the principal action." 37 Wis. 2d, at 169. The court then relied on McInnes v. McKay, 127 Me. 110 [(Me. 1928)]. That suit related to a Maine attachment law which, of course, is governed by the same rule as garnishment law. See "garnishment," Bouvier's Law Dictionary; see also Pennoyer v. Neff, 95 U.S. 714 (1877). The Maine law was subjected to practically the same challenges that Brother Harlan and the Court raise against this Wisconsin law. About that law the Supreme Court of Maine said:

> But, although an attachment may, within the broad meaning of the preceding definition, deprive one of property, yet conditional and temporary as it is, and part of the legal remedy and procedure by which the property of a debtor may be taken in satisfaction of the debt, if judgment be recovered, we do not think it is the deprivation of property contemplated by the Constitution. And if it be, it is not a deprivation without 'due process of law' for it is a part of a process, which during its proceeding gives notice and opportunity for hearing and judgment of some judicial or other authorized tribunal. The requirements of 'due process of law' and 'law of the land' are satisfied. 127 Me. 110.

This Court did not even consider the challenge to the Maine law worthy of a Court opinion but affirmed it in a *per curiam* opinion, 279 U.S. 820, on the authority of two prior decisions of this Court.

The Supreme Court of Wisconsin, in upholding the constitutionality of its law also cited the following statement of our Court made in Rothschild v. Knight, 184 U.S. 334, 341 [(1902)]:

> To what actions the remedy of attachment may be given is for the legislature of a State to determine and its courts to decide. . . .

The Supreme Court of Wisconsin properly pointed out:

> The ability to place a lien upon a man's property, such as to temporarily deprive him of its beneficial use, without any judicial determination of probable cause dates back not only to medieval England but also to Roman times. 37 Wis. 2d, at 171.

The State Supreme Court then went on to point out a statement made by Mr. Justice Holmes in Jackman v. Rosenbaum Co., 260 U.S. 22, 31 [(1922)]:

> The Fourteenth Amendment, itself a historical product, did not destroy history for the States and substitute mechanical compartments of law all exactly alike. If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it, as is well illustrated by Ownbey v. Morgan, 256 U.S. 94, 104 [(1921)].

The *Ownbey* case, which was one of the two cited by this Court in its *per curiam* affirmance of McInnes v. McKay, supra, sustained the constitutionality of a Delaware attachment law. . . .

In the first sentence of the argument in her brief, petitioner urges that this Wisconsin law 'is contrary to public policy'; the Court apparently finds that a sufficient basis for holding it unconstitutional. This holding savors too much of the "Natural Law," "Due Process," "Shock-the-conscience" test of what is constitutional for me to agree to the decision. See my dissent in Adamson v. California, 332 U.S. 46, 68 [(1947)]. . . .

Note: Due Process as Notice and a Chance to Be Heard

Let's begin by trying to understand why this simple debt collection case launched a revolution in due process. The first step in due process analysis is to determine whether life, liberty, or property is at stake. In *Sniadach*, it is property — Ms. Sniadach's right to the full use of the wages she had earned. Other classic due process cases have held that various government benefits are a form of property and that the government must give beneficiaries notice and a chance to be heard before these benefits are revoked. In one of the most famous cases, for example, the Court held that due process required notice and a right to be heard prior to the termination of welfare benefits under the federal Aid to Families with Dependent Children program and a parallel state law. Goldberg v. Kelly, 397 U.S. 254 (1970). As in *Sniadach*, the Court emphasized in *Goldberg* that "termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. . . . His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy." Id. at 264. In our problem case, does the student have a property interest in attending college, or is it more of a liberty, or associational interest?

Though the short opinion in *Sniadach* spoke only to the peculiar hardships of wage garnishment, it dramatically affected other state procedures regulating the relationship between debtors and creditors. You can anticipate some of the possibilities in Justice Black's concern that the case would affect Maine's procedure for prejudgment "attachment" of property. *Sniadach* had even broader implications because, in *any* civil suit for money damages, not just breach of contract claims central to debtor-creditor disputes, the defendant is a potential debtor. If she loses, she will owe the plaintiff damages. That means every plaintiff has an incentive to use prejudgment procedures to seize the defendant's assets to satisfy the judgment if she prevails. *Sniadach* thus opened all forms of prejudgment seizure of property to attack.

After *Sniadach* was decided both the legal community and creditors anxiously awaited the next case. The long legal journey of Margarita Fuentes to the Supreme Court started with her visit to a Legal Services Office in Miami, Florida. See C. Michael Abbott and Donald C. Peters, Fuentes v. Shevin: A Narrative of Federal Test Litigation in the Legal Services Program, 57 Iowa L. Rev. 955 (1972). Fuentes had purchased a stove and a stereo and fallen behind on her payments. One day the sheriff came to her house waving a writ of replevin, unplugged both items, and carted them away. Again the Court wrote broadly and based its decision squarely on the lack of notice before seizure of the property. Fuentes v. Shevin, 407 U.S. 67 (1972) (holding that prejudgment replevin without notice and opportunity to be heard violates due process).

Though the Florida statute was called "replevin," it was like the provisions of virtually all states that allowed pretrial repossession of property in which both creditor and debtor had some interest. In Louisiana the procedure allowing prejudgment attachment of property was entitled "sequestration." Just two years after *Fuentes*, that statute was upheld. Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974). Lawrence Mitchell allegedly owed $574.17 on a stove, stereo, refrigerator, and washing machine when they were seized from him.

In an unusually bitter dissent, Justice Stewart, writing for three members of the Court, said that *Mitchell* was "constitutionally indistinguishable from *Fuentes*." Id. at 634 (Stewart, J., dissenting). But the majority found that the statute was saved by provisions for the exercise of real judicial discretion in issuing prejudgment orders, the posting of a bond, and a quick postseizure hearing.

Essentially *Mitchell* held that it was possible for creditors' remedies to pass constitutional muster. But the final case in the series, North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975), holding Georgia's prejudgment attachment statute unconstitutional, made plain that due process scrutiny was still alive:

> Here, a bank account, surely a form of property, was impounded and, absent a bond, put totally beyond use during the pendency of the litigation on the alleged debt, all by a writ of garnishment issued by a court clerk without

> notice or opportunity for an early hearing and without participation by a judicial officer.

Id. at 606.

For almost 20 years, the Supreme Court did not take another prejudgment remedies case. In the meantime, state legislatures scrambled to revise their procedures to better balance the interests of creditors, debtors, plaintiffs, defendants, and commercial actors.

One state's efforts to update its prejudgment remedies were in the background of the 1991 Supreme Court opinion in Connecticut v. Doehr, 501 U.S. 1 (1991). In that case, a personal quarrel led to the placing of a lien on Doehr's house in connection with a tort action for assault and battery. A lien prevents the sale of the property and can also obstruct the use of the property as collateral on a loan. Relying on the *Sniadach* line, the Court held that, as applied in this case, the Connecticut statute violated due process.

Though it revived procedural due process in a rather dramatic way, *Doehr* was different because it involved real property. All the prior cases had dealt with some form of personal property and the physical seizure of the property itself, which triggered due process concerns. In Shaumyan v. O'Neill, 987 F.2d 122 (2d Cir. 1993), the Second Circuit upheld the application of the same Connecticut statute involved in *Doehr* in a case where homeowners were dissatisfied with painting and repairs on their house and refused to pay. The contractors sued in state court and obtained an attachment of the home without either a prior hearing or the posting of a bond. Can you see a distinction in the relationship between the defendant's home and the cause of action in each of these two cases? In *Shaumyan*, it matters that the lien is tied to a dispute about work done on the house.

Think about the interaction of legislatures and courts that this set of cases illustrates. Does it seem like a good way for the legal system to operate, or do you agree with the judge who dissented from the Second Circuit's earlier holding that the *Doehr* statute was unconstitutional? He wrote:

> The Due Process Clause is not a code of civil procedure. . . . An *ex parte* prejudgment attachment of real estate does not deprive the owner of any possessory rights in his property. At most, it impairs the market value of the property during the brief interval between the *ex parte* attachment and the "expeditious" adversary hearing required by state law. . . .

Pinsky v. Duncan, 898 F.2d 852 (2d Cir. 1990) (Newman, J., dissenting).

Note how much the personnel of the Court has changed since Sniadach was decided. Almost three decades later, Justice Scalia wrote for a unanimous Court in Gilbert v. Homar, 520 U.S. 924 (1997), that a state university's failure to provide notice and a hearing before suspending a university police officer without pay did not violate the officer's right to due process. The officer had been arrested and formally charged with a felony drug charge, which was dropped a few days later.

Note: Private Actors and Due Process

In the previous note we learned that due process applies only to deprivations of life, liberty, or property. A second basic requirement is state action — only the government is required by the Constitution to render due process in its dealings. In the problem case, we do not specify whether the university is public or private. A private university is not bound by the Due Process Clause.

As you will learn in other courses, the line between private and official conduct is sometimes blurred such that it is difficult to decide whether state action is present. In general, you may assume that when the challenged actions are those of the government itself — such as the admission decisions of a public (but not private) institution — then they satisfy state action and thereby may implicate constitutional rights. Actions by others do not generally implicate constitutional rights. See Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978) (holding there was no state action in the sale of a debtor's goods by a private warehouse that had the goods in its possession and under state law had a lien for unpaid storage charges). This does not mean that private actions are *legal* simply because they are beyond constitutional reach. On the contrary, actions that would be unconstitutional in the public sector likewise may be unlawful in private spheres based on statutory, contract, tort, or other law.

Note: The Mathews *Test*

Once we know that a deprivation of life, liberty, or property occurs as a result of state action, the due process analysis shifts to a balancing test. Can you see what interests the Court weighed in *Sniadach*? Does it matter whether the creditor is right that Ms. Sniadach owes the money for the glasses? Against what ideals of fair procedure is the Court judging the Wisconsin garnishment statute?

The modern balancing test for determining when notice and a hearing must precede the deprivation of life, liberty, or property, and for deciding how complete the hearing must be, is set out in Mathews v. Eldridge, 424 U.S. 319 (1976). In that case, the Court considered whether an evidentiary hearing must precede the termination of Social Security disability benefits. The Court set out the balancing test as follows:

> . . . In *Fuentes v. Shevin,* 407 U.S., at 96-97, the Court said only that, in a replevin suit between two private parties, the initial determination required something more than an *ex parte* proceeding before a court clerk. Similarly, *Bell v. Burson,* 402 U.S., at 540, held, in the context of the revocation of a state-granted driver's license, that due process required only that the pre-revocation hearing involve a probable cause determination as to the fault of the licensee, noting that the hearing "need not take the form of a full adjudication of the question of liability." *See also North Georgia Finishing, Inc. v. Di-Chem, Inc.,* 419

> U.S. 601, 607 (1975). More recently, in *Arnett v. Kennedy, supra,* we sustained the validity of procedures by which a federal employee could be dismissed for cause. They included notice of the action sought, a copy of the charge, reasonable time for filing a written response, and an opportunity for an oral appearance. Following dismissal, an evidentiary hearing was provided. 416 U.S. at 142-146.
>
> These decisions underscore the truism that "[d]ue process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961). "[D]ue process is flexible, and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481 (1972). Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. *More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.*

424 U.S. at 333-335 (emphasis added). Applying these factors, the Court held that no evidentiary hearing was necessary before the government terminated Social Security disability payments because there is an "elaborate" agency review process in which the beneficiary is given notice of the proposed termination, has an opportunity to review the relevant medical reports and other evidence in the case file, and is allowed to submit additional evidence and respond in writing before the termination decision is made. Id. at 338-340.

Unlike in *Goldberg*, the Court emphasized, "[e]ligibility for disability benefits . . . is not based upon financial need," so the "disabled worker's need is likely to be less than that of a welfare recipient" and "[i]n addition to the possibility of access to private resources, other forms of government assistance will become available where the termination of disability benefits places a worker or his family below the subsistence level." Id. at 340-342. The risk of error in existing procedures was relatively low in the Court's view because a medical assessment is a more "easily documented decision than the typical determination of welfare entitlement. In the latter case, a wide variety of information may be deemed relevant, and issues of witness credibility and veracity are often crucial to the decisionmaking process." Id. at 343-344. The government's interest in "conserving scarce fiscal and administrative resources" was significant (every dollar that goes to an undeserving beneficiary diminishes the resources for those who truly need it), and the Court emphasized the "wise admonishment of Mr. Justice Frankfurter that differences in the origin and function of administrative agencies 'preclude wholesale transplantation of the rules of procedure, trial and review which have evolved from the history and experience of courts.

The judicial model of an evidentiary hearing is neither a required, nor even the most effective method of decisionmaking in all circumstances.' FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143 (1940). . . . The essence of due process is the requirement that 'a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.' Joint Anti-Fascist Comm. v. McGrath, 341 U.S. at 171-72 (Frankfurter, J., concurring)." Id. at 348-349.

The *Mathews* balancing test is the culmination of a profound evolution in thought about what constitutes due process of law — an evolution that finds its origin in the Magna Carta. Chapter 39 of that charter of rights provides:

> No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

Chapter 40 provides that "[t]o no one will we sell, to no one deny or delay right or justice." Toni M. Massaro and E. Thomas Sullivan emphasize that in early English constitutional thought, "[i]t was not until a 1354 reissue of the charter that the phrase 'due process of law' was included, but by the end of the fourteenth century the due process check against arbitrary government forces was firmly established within the charter." Toni M. Massaro and E. Thomas Sullivan, The Arc of Due Process in American Constitutional Law 7 (2013). Even then, "development of a truly robust rule of law structure with due process protections did not take place . . . because of the influence of divine right" and deference to parliament — English courts assumed that the process parliament authorized was the process that was "due." Id. at 8.

In the United States, Massaro and Sullivan continue, the earliest treatments of due process by courts

> held that the law of the land was simply a guarantee that citizens would be subject to whatever laws had been passed by the legislature, and that they would not be subject to foreign or arbitrary power.

Id. at 81-82. Notice that, on this view of procedural due process (that whatever process the legislature sets out is "due") Ms. Sniadach would have no recourse against the Wisconsin garnishment statute. "This limited interpretation eventually fell from common use . . . even though it occasionally found support from certain members of the Court . . . ." Id. at 82. The first major shift in the nineteenth century was the development of a historical test that examined the challenged procedure against "those settled usages and modes of proceeding existing in the common and statue law of England . . . which were shown not to have been unsuited to their civil and political condition." Id. at 83. Could Ms. Sniadach have prevailed on this "settled usages" test?

What kinds of settled usages, other than those embedded in statutes, might a court look to? See Norman W. Spaulding, The Enclosure of Justice: Courthouse Architecture, Due Process, and the Dead Metaphor of Trial, 24 Yale J.L. & Hum. 311 (2012) ("Due process . . . has a readily identifiable spatial structure with deep historical and cultural resonance. It is the trial courtroom. And notwithstanding perennial accusations that due process of law is a guarantee of '. . . indefinite content,' courts and legal commentators have systematically relied upon the courtroom trial as an organizing metaphor. . . . [M]odern courts are constantly imagining the adversarial space of the trial courtroom as they decide what procedures should govern pre-trial procedures, alternative forms of dispute resolution, and the operation of the modern administrative state.").

The modern *Mathews* balancing test, Massaro and Sullivan emphasize, developed gradually over the course of the twentieth century without ever completely displacing the "settled usages" approach. Massaro and Sullivan, supra, at 87. They point in particular to the significance of Justice Frankfurter's distillation of the virtues of a more flexible approach in his concurring opinion in a case relied on by the majority in *Mathews*, by Justice Harlan in his attempt to answer Justice Black's dissent in *Sniadach*, and in many other cases:

> "[D]ue process," unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, "due process" cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitude of fairness between man and man, and more particularly between the individual and government, "due process" is compounded of history, reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess. Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process.

Id. at 86-87 (quoting *Joint Anti-Fascist Comm.*, 341 U.S. at 162-163 (Frankfurter, J., concurring)).

As Massaro and Sullivan conclude, "[d]espite the changes in the standard for determining what process is due for an individual in a certain context over time, the purpose of these procedures has remained the same: to assure that the government makes fair and accurate adjudicatory decisions." Id. at 88.

Note: Critiques of Due Process Balancing

As we will see shortly in cases concerning the right to counsel, the balancing mandated by *Mathews* often comes out in favor of the government

and of restricted rather than elaborate process. *Mathews* itself is an example of that. The Court concluded that due process does not demand an evidentiary hearing. A more recent example is Hamdi v. Rumsfeld, 542 U.S. 507 (2004). After the attacks of September 11, 2001 by the al Qaeda terrorist network, the United States invaded Afghanistan. An American citizen, Yaser Esam Hamdi, was captured on the field of battle by the Northern Alliance and turned over to the U.S. military. He was detained and interrogated in Afghanistan before being transferred to the naval base in Guantanamo Bay, Cuba, in January 2002. When his U.S. citizenship was confirmed a few months later he was transferred to a naval brig in Charleston, South Carolina. Hamdi's father challenged his son's detention by filing an action in federal court asserting that his son had been in Afghanistan to do relief work, that he had been in the country less than two months before being captured, and that he was not properly classified as an "enemy combatant." The government responded by filing a declaration by an intelligence officer asserting that Hamdi was "affiliated" with the Taliban.

The central question was what procedures the government had to follow in determining whether Hamdi was indeed an enemy combatant. Justice O'Connor, writing for a plurality, applied the *Mathews* balancing test and concluded that while the government had to provide an evidentiary hearing to protect Hamdi's liberty interest in establishing that he was not subject to indefinite detention as an enemy combatant, hearsay should be allowed, the government should enjoy a presumption in favor of its evidence, and the adjudicator need not be a judicial officer. These procedural modifications, Justice O'Connor concluded, were necessary to protect the government's national security interests in a time of war

A few months after the case was decided, the government released Hamdi from the naval brig under negotiated terms. By that time, Hamdi had been detained without charges for almost three years. To secure his release, Hamdi agreed to give up his U.S. citizenship, to be deported to Saudi Arabia, and to abide by travel restrictions prohibiting him from returning to the United States or going to Israel, the West Bank, the Gaza Strip, Syria, Afghanistan, or Pakistan. He also was required to waive any right to sue the United States for the harm caused by his detention.

Justices Scalia and Stevens, an unlikely duo, dissented on the ground that a U.S. citizen either must be charged and tried or released. Far from providing a reliable measure of due process, they complained, *Mathews* balancing invites the Court "to prescribe what procedural protections *it* thinks appropriate" and adopt a "Mr. Fix-it Mentality" well beyond the competence and authority of the judicial branch. Id. at 575-576 (Scalia, J., dissenting) (emphasis in original). Justice Thomas's separate dissent in *Hamdi* attacked the balancing test as well. He argued that due process balancing has no place in matters of national security. And even if it were applicable, he added, the plurality got the balance wrong by giving excessive weight to Hamdi's interests and insufficient weight to government interests. His

dissent parallels arguments Justice Rehnquist once raised regarding the subjectivity of the *Mathews* factors:

> In *Goldberg* we required a full-fledged trial-type hearing, and in *Mathews* we declined to require any pretermination process other than those required by the statute. *At times this balancing process may look as if it were undertaken with a thumb on the scale, depending upon the result the Court desired*. . . . The lack of any principled standards in this area means that these procedural due process cases will recur time and again. Every different set of facts will present a new issue on what process was due and when.

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 562, n.* (1985) (Rehnquist, J., dissenting) (emphasis added). You can see that, although Justice Black provided the lone dissent in *Sniadach*, his concerns about expanding procedural due process protections based on the sentiments of individual Justices have resonated with the modern Court.

There are equally strong criticisms of the *Mathews* balancing test from the left. Professor Jerry Mashaw's critique has been particularly influential. See Jerry Mashaw, The Supreme Court's Due Process Calculus for Administrative Adjudication: Three Factors in Search of a Theory of Value, 44 U. Chi. L. Rev. 28 (1976). His primary concern is that the Court's account of the values of due process was incomplete. Due process is not only about the risk of error, but also about individual dignity, equality, and tradition. Yet nothing in *Mathews* refers to these important aspects of "fair procedure." Moreover, although the due process calculus set forth in *Mathews* appears scientific, it actually is highly subjective and manipulable—here liberal and conservative critiques meet. How is the judge to measure the risk of error referred to in the test? As Mashaw says, "the calculus asks unanswerable questions. For example, what is the social value, and the social cost, of continuing disability payments until after an oral hearing for persons initially determined to be ineligible?" Id. at 48. Finally, Mashaw argues that the Bill of Rights is "meant to insure individual liberty in the face of contrary collective action." Id. at 49. This suggests that the *Mathews* calculus is focusing on constitutionally irrelevant factors by emphasizing state interest rather than individual liberty.

Yet this critique may ignore the positive features of *Mathews*, especially its realistic appraisal of the significance of procedural costs to procedural rights, and of how any basic constitutional test must be flexible enough to apply to a vast range of due process scenarios. Particularly in the context of administrative law, which *Mathews* addressed, procedural costs must be taken seriously, given the number of hearings involved. Moreover, one must consider that administrative procedures are intended to be an alternative to civil litigation. If due process is construed to require a full-blown adversary hearing in every instance, then most alternative forms of dispute resolution would violate due process.

Of course, taken too far, administrative adjudication can replace trials in independent courts with resolution by the executive branch on terms that

serve the interests of the executive branch. See Norman W. Spaulding, Due Process Without Judicial Process, 85 Fordham L. Rev. 2249, 2252-2253 (2017) (describing desire of New Deal proponents of administrative state to relegate courts "to a subordinate role in American Law" and to "circumvent judicial review" of agency action). This has become a persistent complaint in areas such as immigration law because the first "courts" to hear asylum and removal cases are administrative courts staffed and supervised by the Attorney General. See Maria Sacchetti, Immigration Judges' Union Calls for Immigration Court Independent from Justice Dept., Wash. Post, Sept. 21, 2018 (reporting that the Attorney General removed judges who challenged the fairness of notice given to immigrants of their hearings, limited judge's power to grant immigrants time to locate counsel or gather evidence, and imposed a "production quota" of at least 700 cases a year that "undermin[ed] judicial independence and immigrants' rights to a fair hearing"); Adrienne Pon, Note, Identifying Limits to Immigration Detention Transfers and Venue, 71 Stan. L. Rev. 747 (2019); Emily Ryo, Detention as Deterrence, 71 Stan. L. Rev. Online 237 (2019) (describing procedural burdens that prevent immigrants from pursuing judicial review of meritorious claims for relief).

Note: Due Process and Postjudgment Remedies

Sniadach was decided in 1969, five years after President Johnson declared an "unconditional war" on poverty in his State of the Union address. The series of legislative initiatives that followed to "relieve the symptoms of poverty . . . and, above all, to prevent it," have been condemned as "a catastrophe" by critics and praised as expressing our deep commitment as a society to the "dignity and potential of every human being" by others. See Dylan Matthews, Everything You Need to Know About the War on Poverty, Wash. Post., Jan. 8, 2014. One of the reasons the NAACP became involved in cases like Ms. Sniadach's is that civil rights leaders saw the potential of the president's initiative to unify social movements — a policy that could advance civil rights by addressing broader legal and social conditions that perpetuate economic disparities. Part of the most vigorous exchanges among the Justices in *Sniadach* concerns whether the majority was using the Due Process Clause of the Fourteenth Amendment in the service of the war on poverty.

In the wake of the Great Recession of 2008 and the recession caused by COVID-19, attention has returned to widespread economic disparities and racial injustice in debtor-creditor relations. The excerpt that follows is part of a civil complaint — the pleading filed to initiate a lawsuit — drafted by the Civil Advocacy Clinics at the Saint Louis University School of Law and other public interest lawyers. This particular complaint involves debt collection practices by a city bordering Ferguson, Missouri. After issuing traffic citations and fines for other minor violations of the municipal code, the City of Jennings holds indigent defendants who cannot afford bail in

custody until they agree to plead guilty. The guilty plea is then used as the basis for a *civil* judgment requiring payment of the fines, fees, costs, and late payment penalties. In order to collect, the city issues arrest warrants for non-payment and missed payments, and it holds arrestees in indefinite detention in its municipal jails to induce them to pay. Because the city budget depends in part on the revenue from its fines and penalties, it has a strong incentive to use aggressive collection practices.

Information about these practices came to light after the Department of Justice published its report on widespread racial discrimination in the administration of criminal justice in and around Ferguson. One of the findings of the DOJ Report on Ferguson was that severe funding shortages and racial discrimination led the court to become parasitic on the population it was supposed to serve. "The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests. This has led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements. The court's practices . . . impose unnecessary harm, overwhelmingly on African American individuals, and run counter to public safety." Investigation of the Ferguson Police Dep't, United States Dep't of Justice, Civil Rights Division, Mar. 4, 2015.

The *Sniadach-Fuentes* line of cases addressed due process defects in *prejudgment* remedies that favored creditors. As you read the excerpts of the complaint below, consider how those cases, and the *Mathews* balancing test, might apply to *postjudgment* collection practices.

Jenkins v. The City of Jennings

4:15-cv-00252
Filed February 8, 2015
United States District Court for the Eastern District of Missouri

CLASS ACTION COMPLAINT

INTRODUCTION

1. The Plaintiffs in this case are each impoverished people who were jailed by the City of Jennings because they were unable to pay a debt owed to the City from traffic tickets or other minor offenses. In each case, the City imprisoned a human being solely because the person could not afford to make a monetary payment. Although the Plaintiffs pleaded that they were unable to pay due to their poverty, each was kept in jail indefinitely and none was afforded a lawyer or the inquiry into their ability to pay that the United States Constitution requires. . . .

2. Once locked in the Jennings jail, impoverished people owing debts to the City endure grotesque treatment. They are kept in overcrowded cells; they are denied toothbrushes, toothpaste, and soap; they are subjected to the stench of excrement and refuse in their congested cells; they are surrounded by walls

smeared with mucus, blood, and feces; they are kept in the same clothes for days and weeks without access to laundry or clean undergarments; they step on top of other inmates, whose bodies cover nearly the entire uncleaned cell floor, in order to access a single shared toilet that the City does not clean; they huddle in cold temperatures with a single thin blanket even as they beg guards for warm blankets; they develop untreated illnesses and infections in open wounds that spread to other inmates; they sleep next to a shower space overgrown with mold and slimy debris; they endure days and weeks without being allowed to use the shower; women are not given adequate hygiene products for menstruation, and the lack of trash removal has on occasion forced women to leave bloody napkins in full view on the cell floor where inmates sleep; they are routinely denied vital medical care and prescription medication, even when their families beg to be allowed to bring medication to the jail; they are provided food so insufficient and lacking in nutrition that inmates are forced to compete to perform demeaning janitorial labor for extra food rations and exercise; and they must listen to the screams of other inmates being beaten or tased or in shrieking pain from unattended medical issues as they sit in their cells without access to books, legal materials, television, or natural light. Perhaps worst of all, they do not know when they will be allowed to leave.

3. In each of the past two years, inmates have committed suicide in the Jennings jail after being confined there solely because they did not have enough money to buy their freedom. Others have attempted to take their own lives under similar conditions.

4. These physical abuses and deprivations are accompanied by other pervasive humiliations. Jennings jail guards routinely taunt impoverished people when they are unable to pay for their release, telling them that they will be released whenever jail staff "feels" like letting them go. As described in detail below, jail staff routinely laugh at the inmates and humiliate them with discriminatory and degrading epithets about their poverty and their physical appearance.

5. City officials and employees — through their conduct, decisions, training and lack of training, rules, policies, and practices — have built a municipal scheme designed to brutalize, to punish, and to profit. The architecture of this illegal scheme has been in place for many years.[1]

6. In 2014, the City of Jennings issued an average of more than 2.1 arrest warrants per household and almost 1.4 arrest warrants for every adult, mostly in cases involving unpaid debt for tickets. . . .

1. See, e.g., T.E. Lauer, Prolegomenon to Municipal Court Reform in Missouri, 31 Mo. L. Rev. 69, 93 (1966) ("Our municipal jails are, in almost every case, nothing but calabooses suited at best for temporary detention. The worst of them are comparable with medieval dungeons of the average class; they are the shame of our cities."); id. at 88 ("[I]t seems that many citizens of the state are being confined needlessly in our city jails. . . ."); id. at 85 ("[I]t is disgraceful that we do not appoint counsel in our municipal courts to represent indigent persons accused of ordinance violations."); id. at 90 ("It is clear that many municipalities have at times conceived of their municipal courts in terms of their revenue-raising ability. . . .").

7. The City's modern debtors' prison scheme has been increasingly profitable to the City of Jennings, earning millions of dollars over the past several years. It has also devastated the City's poor, trapping them for years in a cycle of increased fees, debts, extortion, and cruel jailings. The families of indigent people borrow money to buy their loved ones out of jail at rates arbitrarily set by jail officials, only for them later to owe more money to the City of Jennings from increased fees and surcharges. Thousands of people like the Plaintiffs take money from their disability checks or sacrifice money that is desperately needed by their families for food, diapers, clothing, rent, and utilities to pay ever increasing court fines, fees, costs, and surcharges. They are told by City officials that, if they do not pay, they will be thrown in jail. The cycle repeats itself, month after month, for years.

8. The treatment of Samantha Jenkins, Edward Brown, Keilee Fant, Byeon Wells, Meldon Moffit, Allison Nelson, Herbert Nelson Jr., and Tonya DeBerry reveals systemic illegality perpetrated by the City of Jennings against some of its poorest people. . . .

9. By and through their attorneys and on behalf of a class of similarly situated impoverished people, the Plaintiffs seek in this civil action the vindication of their fundamental rights, compensation for the violations that they suffered, injunctive relief assuring that their rights will not be violated again, and a declaration that the City's conduct is unlawful. In the year 2015, these practices have no place in our society. . . .

171. Tonya DeBerry is a 52-year-old woman. Over the past 13 years, she has been jailed repeatedly by the City of Jennings because of unpaid court fines and costs. Over that time period, she has paid thousands of dollars to Jennings for fines, costs, surcharges, and added fees. . . .

173. On one occasion in 2012, Ms. DeBerry arrived late to the Jennings court while proceedings were going on. She had arrived to make her monthly $100 payment. She was told that the doors to the public proceedings were locked because the court was too crowded, and officers refused to let her enter to make her payment. The court officer told her to call the Jennings clerk the next day. Ms. DeBerry called the next day, and the City clerk told her that the City would not accept payment because she was a day late. The City told her that there was now a warrant out for her arrest because she had not paid the previous evening. She was told that she now had to pay a "bond" of $400. When Ms. DeBerry asked what that meant, the City clerk explained that she would be arrested if she did not pay $400 and that her debts had increased because, pursuant to City policy, a warrant fee had been added to her costs. In order to remove the warrant and avoid arrest, she had to pay $400. Ms. DeBerry could not afford to pay $400 to remove the warrant.

174. In September 2012, Ms. DeBerry was again arrested and held in the Jennings jail because of her non-payment. Jail staff threatened her with indefinite incarceration unless she paid approximately $700. It took her family two days to borrow and raise the $700 necessary to pay for her release.

175. In January 2014, Ms. DeBerry was again arrested because of her non-payment. When she was brought to the jail, she was told that she would not

be released unless she paid $2,400 because that was the amount of her total debt to the City from old fines and costs. She was then told that she would be released for $1,400. She stated that she was poor and that she could not afford to pay anywhere near that amount. After two nights in jail, the City reduced her release amount to $100, and her family came to the jail and bought her release.

176. For years, Ms. DeBerry has been afraid to leave her own home for fear that she would be arrested on warrants for non-payment and held for days or weeks until someone could borrow enough money to free her. Ms. DeBerry is disabled and depends on federal disability support and food stamps to survive. . . .

178. As with the other Plaintiffs, the threat of being jailed for non-payment by Jennings has been a constant fact of everyday life for Ms. DeBerry and her family for years. It affects every decision to leave their home every day, including going to the grocery store or going to church. . . .

181. Ms. DeBerry has paid many thousands of dollars to Jennings for ballooning costs, fines, surcharges, and fees.

182. During her time in the Jennings jail, Ms. DeBerry was forced to endure grotesque conditions similar to those endured by the other Plaintiffs described in this Complaint. . . .

184. As with all of the other Plaintiffs, the City of Jennings never made any meaningful inquiry into Ms. DeBerry's indigence prior to jailing her or keeping her in jail for non-payment. Nor did the City consider any alternatives to incarceration or provide her with an attorney. . . .

187. It is the policy and practice of the City of Jennings to use its municipal court and its jail as significant sources of revenue generation for the City. The money to be brought into the City through the municipal court is budgeted by the City in advance.[15] As a result, the entire municipal government apparatus, including municipal court officials and City jailors, has a significant incentive to operate the court and the jail in a way that maximizes revenues, not justice.

188. Decisions regarding the operation of the court and the jail — including but not limited to the assessment of fines, fees, costs,[16] and surcharges; the availability and conditions of payment plans; the setting of amounts required for release from jail; the issuance and withdrawal of arrest warrants; and the non-appointment of an attorney — are significantly influenced by and based on maximizing revenues collected rather than on legitimate penological considerations. . . .

190. Over the past five years, the City of Jennings, according to its public records, has earned more than $3.5 million dollars from its municipal court

15. The City uses the money collected through these procedures to help fund the City jail, to pay Municipal Court judicial salaries, to pay City Attorney's Office salaries, and to fund other portions of the City budget.

16. Missouri Law requires costs to be waived for the indigent, see Mo. Code § 479.260, but the City ignores that law.