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WAGE GARNISHMENT IN WASHINGTON— AN EMPIRICAL STUDY

INTRODUCTION

Consumer credit is big business in America today. Although credit was originally extended to aid the sale of merchandise, merchandizing has become a means of selling credit.[1] Total consumer installment credit outstanding in the United States has increased from 42.832 billion dollars in 1960 to 76.223 billion in October 1967.[2] At least fifty percent of our population is now paying some form of installment debt.[3] In spite of earlier reservations,[4] most businessmen now readily agree that credit has been a boon to the economy.[5]

The rising use of consumer credit, however, has an unfortunate adjunct in the notable increase of wage garnishments. Municipal courts throughout the country appear inundated with these actions.[6] In Seattle, the district justice court processed over 15,000 writs of

[1] Testimony of David Caplovitz before a hearing on "Truth-in-Lending" held by the New York Attorney General, reported in 22 PERS. FIN. L.Q. REP. 11, 12 (1967).

[2] 53 FED. RESERVE BULL. 2122 (Dec. 1967).

[3] A survey conducted in early 1963 showed that 50% of the interview "spending units" owed some installment debt. The mean debt (of the debtors) was $905. G. KATONA, C. LININGER & E. MUELLER, 1963 SURVEY OF CONSUMER FINANCES 59, 65 (1964). In 1958, the President of the National Consumer Finance Association estimated that 60% of United States families use some form of consumer credit. Curtiss, *Who Uses Consumer Credit and How Much Do They Use?*, 12 PERS. FIN. L.Q. REP. 118, 119 (1958).

[4] *See* G. KATONA, THE POWERFUL CONSUMER 189 (1960).

[5] *See, e.g.*, P. CROWN, LEGAL PROTECTION FOR THE CONSUMER 16 (1963).

[6] In Chicago, the Cook County Circuit Court issued 84,513 garnishments in 1965, 15% more than in 1964, and 72% more than in 1961. Court officials in New York, Cleveland and other big cities also cite rising garnishment totals. Wall Street Journal, March 15, 1966, at 1, col. 6. In 1965, over 12,000 garnishments were issued by the District Court of Multnomah County, Oregon. Snedecor, *Why So Many Bankruptcies in Oregon?*, 40 REF. J. 78, 79 (1966). The San Francisco Sheriff's Office made more than 5,900 services in the first two months of 1965. These included 3,700 levies under writs of attachment and execution—of which 75% to 80% were wage garnishments. Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 CALIF. L. REV. 1214 (1965). During the fiscal year 1965-66 the Los Angeles County Marshal's Office made 127,762 attempts to levy on debtors, or persons holding debtor's funds. *Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 90th Cong., 1st Sess., pt. 2, at 1036 (1967) [heinafter cited as *Hearings*]. In 1958 a District of Columbia judge estimated that 1,000 garnishments a week were issued through his court. Kronheim, *A Judge Takes a Critical Look at the District of Columbia Garnishment Law*, 12 PERS. FIN. L.Q. REP. 41 (1958). One California collector estimated that his office filed 125 to 150 garnishments a month. *California Assembly Interim Comm. on the Judiciary, Proceedings on Attachments—Exemption of Personal Property* 40-41 (1964) (testimony of Mr. McCarty) [hereinafter cited as *Proceedings*]. A representative of the California Association of Collectors estimated that their law office instructed levying officers with respect to over 1,000 attachments and executions per week. *Proceedings* 57 (testimony of Mr. Weissman).

garnishment in 1966;[7] 85 percent of these were wage garnishments.[8] Of course, processing papers for these numerous actions imposes enormous clerical costs. But more significant are the burdensome social costs resulting from wage garnishment, such as unemployment, bankruptcy, and reinforcement of the disdain held for our courts by a large segment of society.

With a growing awareness of these problems, state legislatures throughout the country have been unusually active in amending their garnishment statutes.[9] In Washington, the garnishment statutes were amended during the last legislative session,[10] and additional testimony on the subject has been received recently.[11] The current draft of the Uniform Consumer Credit Code contains a provision limiting garnishments,[12] as does the proposed Truth in Lending Bill now before Congress.[13]

If adopted, the Truth in Lending Bill would supersede all inconsistent state laws and would apply to all garnishments.[14] The bill creates a wage exemption of thirty dollars per week plus 90 percent of wages in excess of that amount.[15] Discharge of an employee because his wages have been garnished once is also prohibited.[16]

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[7] In 1964, the Seattle District Justice Court processed 12,280 writs of garnishment; in 1965 this increased to 14,332; and in 1966 to 15,624. Data provided by Chief Civil Clerk, Seattle District Justice Court.

[8] A random survey of garnishment cases in the Seattle District Justice Court reveals that 87% of the cases sampled were wage garnishments. *See* note 18 *infra.*

[9] For discussions of recent statutory changes see, e.g., Lee, *An Analysis of Kentucky's New Exemption Law,* 55 KY. L.J. 618 (1967); Note, *Wage Garnishment as a Collection Device,* 1967 WIS. L. REV. 759 [hereinafter cited as 1967 WIS. L. REV.]; 7 WASHBURN L.J. 51 (1967). Much of the recent legislative activity has been directed toward raising the amount of wages statutorily exempted from garnishment.

[10] Ch. 142, 143, [1967] Wash. Sess. Laws 903, 919.

[11] The Judiciary Committee of the Washington State Legislative Council held hearings on garnishment on November 11, 1967.

[12] UNIFORM CONSUMER CREDIT CODE §§ 5.104-05 (Tent. Draft No. 2, Working Draft No. 4, 1967). *See* Jordan & Warren, *A Proposed Uniform Code for Consumer Credit,* 8 B.C. IND. & COM. L. REV. 441 (1967).

[13] H.R. 11601, 90th Cong., 1st Sess., tit. II (1967).

[14] *Id.* § 202(a). State provisions which provide for more limited garnishments or further restrict discharge are expressly *not* superseded. *Id.* § 204. Sec. 201 rests Congressional authority for the enactment upon the commerce clause:

> The Congress finds that garnishment of wages is frequently an essential element in predatory extensions of credit and that the resulting disruption of employment, production, and consumption constitutes a substantial burden upon interstate commerce.

This section probably validates Congressional regulation of garnishments arising from purely local transactions because wage garnishments exert a substantial economic effect on interstate commerce. *See* Wickard v. Filburn, 317 U.S. 111 (1942).

[15] H.R. 11601, 90th Cong., 1st Sess., § 202(a) (1967).

[16] *Id.* § 203(a). Enforcement of both sec. 202 and 203 is entrusted to the Secretary of Labor.

These provisions would effect sweeping reform in state garnishment statutes. Unfortunately, additional state provisions would be necessary to avoid deficiencies in the proposed federal statute. For instance, if state statutes did not provide for garnishment of future wages,[17] creditors who could reach only 10 percent of a debtor's wages under the federal law might garnish a debtor's wages repeatedly week after week. This could lead to greater employer expense and would increase the likelihood that the debtor would be fired. The proposed statute would not prevent such discharge because discharge is not prohibited after the second garnishment. These and other problems will be discussed below, and statutory reforms will be recommended. These reforms combine basic provisions of the proposed federal legislation with other measures deemed advisable after study of the wage garnishment problem.

The empirical data presented in this note were derived from studies conducted over a period of several months by members of the *Washington Law Review*. The most important project in terms of time and resource allocation was a study of 187 randomly selected case files taken from Seattle District Justice Court.[18] The results of this study are reproduced in the Appendix. Three other studies were

[17] Washington's garnishment provisions, for example, allow garnishment of only those wages due at the time the writ is served. *See* note 29 *infra* and accompanying text.

[18] In 1966 there were 36,000 cases filed in the Seattle District Justice Court, of which 15,600 were garnishments. (Data provided by Chief Civil Clerk, Seattle District Justice Court). The high number of cases in proportion to garnishments is accounted for by the fact that each garnishment must be accompanied by or preceded by a main action on the underlying debt which is assigned a separate docket number. Seeking a sample of 200 cases, 450 docket numbers from the year May 1, 1966, to April 30, 1967, were randomly selected. The selection was made from RAND CORP., A MILLION RANDOM DIGITS WITH 100,000 NORMAL DEVIATES (1955). The random digits in the above source are arranged in groups of five in columns running down the page. Beginning with the first page, the columns were read from top to bottom and each group of five digits corresponding to a docket number within the year chosen was recorded. After the docket numbers which did not represent garnishment actions and those with hopelessly incomplete data were eliminated, the sample consisted of 187 garnishment actions. [Hereinafter cited as Justice Court Survey].

The Seattle District Justice Court is a court of limited jurisdiction with venue corresponding to the boundaries of the city of Seattle. Seattle, Washington, in 1967 had a population of 580,000. Although the city is the hub of a large metropolitan area extending along Puget Sound, the full spectrum of economic and social classes may still be found within the city limits.

The state's largest private employer, the Boeing Company, has plants just south of Seattle, and many of its employees are residents of the city. In addition, Seattle has the normal range of light manufacturing industries. The area's economy generally manifested a constant upward trend during the year studied, as it had during previous years. *See* SEATTLE-FIRST NATIONAL BANK, ANNUAL REVIEW — SUMMARY OF PACIFIC NORTHWEST INDUSTRIES (May, 1967). The area's population was growing at a rate somewhat above normal, probably due to an influx of workers seeking jobs as a result of an expansion program undertaken by the Boeing Company.

undertaken, consisting of telephone surveys of selected groups of collectors,[19] employers,[20] and union representatives.[21] The results of these are not reproduced in tabulated form but the more significant data are set out in the text and footnotes to this note. In addition to these surveys, interviews were conducted with employers, union leaders, judges, lenders, attorneys, collection agency representatives, and staff members of the Washington State Attorney General's Office and of the Legal Services Division of the Office of Economic Opportunity. It is hoped that the information derived from this research and the conclusions based thereon will provide concerned legislators with a beginning point for an informed review of Washington's garnishment provisions.

This note follows a topical approach. The statutory framework of wage garnishment in Washington is set forth at the outset, followed by an analysis of the use of the remedy by creditors. A third section of the note is concerned with the employer's role in the process; the fourth section with the problems of debtors. Sections dealing with the possible impact of restrictions on wage garnishment upon credit

[19] Twenty-seven collectors were interviewed by telephone from a prepared questionnaire. The subjects were selected from the Seattle Telephone Directory, and although some were selected by chance, an attempt was made to include collection agencies who frequently appeared as plaintiffs in cases in the justice court sample. The questionnaire consisted of twenty-five questions covering four general areas: 1) the general nature of the collector's business (type of debts handled, amount of successful collections, etc.); 2) the use and factors influencing the choice of using garnishment and prejudgment garnishment; 3) nonjudicial settlement or renegotiation of claims; and 4) collector attitudes toward possible revisions of the garnishment statutes. The collector survey was probably the least successful of those taken, because of the small sample and the high nonresponse rate. [Hereinafter cited as Collector Survey].

[20] Forty-three employers were interviewed by telephone from a prepared questionnaire. The subjects were selected from STATE OF WASHINGTON DEPT. OF COMMERCE AND ECONOMIC DEVELOPMENT, 1964 DIRECTORY OF WASHINGTON STATE MANUFACTURERS 131-43 (July, 1964). Every twenty-third name on an alphabetical list of manufacturers in Seattle was selected; to this was added a selected list of fourteen of the city's largest manufacturers. The interviews were generally conducted with representatives of the personnel departments of the larger firms, and with the owner or manager of the smaller firms. The questionnaire consisted of thirty questions divided roughly into six areas: 1) the type of employee employed by the firm; 2) the firm's experience with wage garnishment; 3) employee attitudes and responses to garnishment; 4) the firm's attitudes toward creditors; 5) the firm's responses to garnishment and credit problems of its employees; and 6) the interviewee's attitudes toward possible revisions of the garnishment statutes. [Hereinafter cited as Employer Survey].

[21] Telephone interviews were conducted from a prepared questionnaire with representatives of twenty-five unions selected from the Seattle Telephone Directory. The questionnaire consisted of eighteen questions divided into three areas: 1) the extent to which union membership was concerned about garnishment; 2) union responses to garnishment and the credit problems of its membership; and 3) union attitudes toward possible revisions of the garnishment statutes. [Hereinafter cited as Union Survey].

and with possible judicial restrictions on abuses in the system serve to highlight further the manifold problems presented by the existing wage garnishment process. Finally, specific recommendations for legislative reform are proposed.

I. The Statutory Framework

Washington's garnishment provisions are typical of those in other states where garnishment statutes have not undergone substantial revision in recent years.[22] A wage garnishment writ may issue for one of two principal reasons: (a) in execution of a judgment; or (b) where the plaintiff sues for a debt which he alleges to be just, due and unpaid, and makes an affidavit that the writ applied for is not sued out to injure either the principal defendant or the garnishee-employer.[23] Garnishment prior to judgment ((b), above) is usually commenced by filing the writ of garnishment and the complaint simultaneously. In wage garnishment cases the writ of garnishment is usually served upon an employer prior to service of the complaint upon the principal defendant.[24] While the statutes do require a plaintiff-creditor to execute a garnishment bond insuring the veracity of the allegations necessary for issuance of a prejudgment garnishment writ, this requirement applies, in most cases, only when the amount claimed in the main action exceeds three hundred dollars.[25]

[22] The Washington garnishment provisions were amended in the last legislative session (ch. 142, 143, [1967] Wash. Sess. Laws 903, 919) but, insofar as the amendments are relevant to wage garnishment, their principal impact will be to reduce the number of defaults by employers, by requiring more explicit wording of the answer form and the serving of addressed envelopes with the writ. *See* notes 75-77 *infra* and accompanying text. Before that, the wage exemption was raised in 1963. Ch. 13, § 1, [1963] Wash. Sess. Laws 288.

[23] In superior court a writ of garnishment may also issue pursuant to a writ of attachment. Wash. Rev. Code § 7.32.010 (1956) (grounds for issuance of a writ in superior courts). The justice court section omits a suit pursuant to a writ of attachment. Wash. Rev. Code § 12.32.010 (Supp. 1967).

Garnishment proceedings in the justice court and superior courts are governed by separate statutory provisions. Justice court proceedings are a part of Title 12 (Justice Courts—Civil Procedure) under Chapter 12.32.—(garnishment). Superior court proceedings are a part of Title 7 (Special Proceedings) under Chapter 7.32.—(garnishment). However, Wash. Rev. Code §§ 7.32.060-.090, dealing with state and public corporations, are apparently applicable to both justice and superior courts. *See* Wash. Rev. Code § 7.32.310 (Supp. 1967).

Generally, the garnishment provisions governing the two courts are the same; any relevant differences will be noted. This project is concerned primarily with practices in justice court, where the majority of collection actions are filed. Justice court jurisdiction is limited to claims under $1,000 exclusive of interest, cost and attorney's fees, and excludes controversies which bring into issue the title to property. Wash. Rev. Code §§ 3.66.020-.030 (1956).

[24] *See* note 97 *infra.*

[25] Wash. Rev. Code § 7.32.020 (1956), requires plaintiff to execute a bond for all prejudgment garnishments in superior court. Bond is required in justice court only if the plaintiff's claim exceeds $300. Wash. Rev. Code § 12.32.015 (Supp. 1967).

A writ of garnishment must be served with four prepared statutory answer forms and three addressed, stamped envelopes;[26] it may be served either by a sheriff or by any citizen of the state over twenty-one years of age not a party to the action.[27] The garnishee defendant must answer before the return date noted on the writ.[28] When the wage garnishment writ is served on the employer-garnishee it catches all the defendant-debtor's wages then due; it is not effective against future wages.[29] Washington exempts from garnishment between twenty-five and fifty dollars per week of a defendant's wages, depending on the number of his dependents.[30] However, these exemptions are not automatically granted by the employer; they must be claimed by the principal defendant at the courthouse before a court clerk.[31]

While the Washington statute is similar to those in other states, data compiled for this note indicate that in actual operation this statute contains defects which lead to substantial injustice. An example is the lack of automatic exemptions for debtor-employees which is, to a large degree, responsible for the fact that only 7 percent of all employees whose wages are garnished claim their statutory exemptions.[32] While this and other examples will be discussed later, it should be noted at this juncture that such defects are inherent in a statutory framework which fails to take account of operational reality and cannot be countered by simply tinkering with the statute as was

[26] WASH. REV. CODE §§ 7.32.120, 12.32.060 (Supp. 1967). The three envelopes must be addressed to: the clerk of the court issuing the writ; plaintiff or his attorney; and the defendant.

[27] *Id.*

[28] WASH. REV. CODE §§ 7.32.170, 12.32.120 (1956).

[29] WASH. REV. CODE § 7.32.180 (Supp. 1967); WASH. REV. CODE § 12.32.130 (1956). *See* Frieze v. Powell, 79 Wash. 483, 140 P. 690 (1914).

[30] WASH. REV. CODE § 7.32.280 (Supp. 1967):

> *Exemption of wages, salary or other compensation*
>
> Thirty-five dollars out of each week's wages, salary or other compensation regularly paid for personal services rendered by any person having one or more individuals dependent upon him or her for support, and in addition thereto five dollars per week for each dependent shall be exempt from garnishment, whether such wages, salary or other such compensation are paid, or to be paid, weekly, monthly, or at other regular intervals, and whether there be due the defendant wages, salary or other such compensation for one week or for a longer period: *Provided,* That the total amount exempted shall not exceed the sum of fifty dollars per week.
>
> Twenty-five dollars out of each week's wages, salary or other compensation of any person without dependents shall be exempt from garnishment....
>
> This act shall apply to garnishments in both the superior courts and justice courts in the state of Washington.

[31] *Id.* The statute by its terms does not state whether the exemption is automatic, but it has been interpreted to require that defendant claim his exemption.

[32] Appendix, Table 6.

done in Washington in the 1967 legislative session.[33] Substantial statutory reform is urgently needed—reform that will reflect commercial reality and protect all parties in the system to the extent such protection is justified.

II. The Use of Wage Garnishment by Creditors[34]

Wage garnishment is the principal legal remedy in the creditor's arsenal of collection devices.[35] Creditors generally contend that its chief importance is as a "club"; that the threat of wage garnishment collects more money than the amount collected through actual use of the remedy in the courts.[36] In fact, collection agencies make most of their collections without recourse to any legal action at all. Seattle collectors interviewed report that they successfully collect about one-half of all accounts turned over to them,[37] and that over 80 percent

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[33] *See* note 22 *supra.*

[34] The word "creditor" is used in this note to refer to a group of which approximately 25% are original creditors (mainly individuals and finance companies), and 75% are collection agencies.

Of the cases in the justice court survey, 78% were brought by plaintiffs on assignments. In data provided by Mrs. Helen Griggs, Chief Civil Clerk, Seattle District Justice Court, there is a breakdown of the 483 cases filed during the week ending April 19, 1967; 74.9% of these were brought by collectors. It is claimed that 98% of the garnishment actions in the District Court of Multnomah County, Oregon, were brought by collectors. Snedecor, *Why So Many Bankruptcies in Oregon?,* 40 Ref. J. 78, 79 (1966).

[35] Collector Survey. Of collectors interviewed, 73% stated that they use garnishments more than any other type of legal action.

[36] *Proceedings* 39 (testimony of Mr. Joseph Weissman, California Association of Collectors):

> The advantage of the remedy in California isn't the actual physical attachment. No creditor or collection agency makes money by virtue of an attachment. It is the fact that the availability of the remedy is there, that each creditor can attach, that requires a debtor who does owe the obligation to seek some arrangement to satisfy.

See, e.g., Brunn, *Wage Garnishment in California: A Study and Recommendations,* 53 Calif. L. Rev. 1214, 1229 (1965); Conard, *An Appraisal of Illinois Law on the Enforcement of Judgments,* 1951 U. Ill. L.F. 96, 100.

The justice court survey reveals that Seattle creditors also do not utilize the actual garnishment to collect money. Employer-garnishees answered in 34.2% of the wage garnishment cases that money was owed the principal defendant (most of the remaining 65.8% of employers were discharged before they had a chance to answer). The average amount of the answer was $151.26. However, this money was ordered paid to the plaintiff in only 16.6% of the total cases, and the average amount ordered paid was $82.06. Creditors were able to recover in default against the employer-garnishee in an additional 4.2% of the cases. *See* Appendix, Table 5. A similar survey in San Francisco shows that even garnishments in execution of judgments successfully recover only ¼ of the principal indebtedness sought. Brunn, *supra* at 1239.

[37] Collector Survey. Collectors were asked what percentage of the value of debts turned over to them were actually collected; of those sampled 23.1% answered 21-40%, and 53.8% answered 41-60%. Figures from the Associated Credit Bureaus of America show that recovery rates of collection agencies vary by state from 12% to 53%. Washington's rate is listed as 34.4% *Proceedings,* App. B.

of these collections are made without filing legal action.[38] A California collector reports that his office takes in 12,500 new accounts per month and finds legal action necessary in only 250 to 300 of these.[39] Since wage garnishment is a particularly "visible" weapon for collection, creditors attribute their high collection rate to the effectiveness of the threat of its use.[40]

However, the importance of wage garnishment as a "club" may be exaggerated. The Seattle employers interviewed think their employees are only moderately concerned about wage garnishment.[41] The labor unions contacted likewise report only moderate interest in wage garnishment among their membership.[42] Indeed, nearly all people pay their debts voluntarily to maintain their credit standing in the community, and would continue to do so with or without existence of the statutory collection remedies of wage garnishment.[43]

The small minority of consumers with which collection agencies deal, however, may be acutely aware of the possibility of wage garnishment. The sharp awareness of garnishment among minority groups,[44] people filing bankruptcy,[45] and people who quit their jobs in fear of garnishment[46] lends credence to creditors' claims that the fear of garnishment collects more than the remedy itself.

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[38] Collector Survey. Collectors were asked how many of their accounts collected were collected without recourse to legal action; of those sampled 59.3% answered over 80%; 14.7% answered 71% to 80%; and 11% did not answer.

[39] *Proceedings* 40-41 (testimony of Hugh McCarty, California Association of Collectors).

[40] *See* note 35 *supra.*

[41] Employer Survey. Of those interviewed, 51.5% said their employees were not at all concerned about wage garnishment; 25.7% said they were at least somewhat concerned; while 22.8% didn't know.

[42] Union Survey. Union representatives were asked how they would describe their union's concern in seeking protection for its members from garnishment. The answers of those sampled were: adamant 4%; strong 36%; weak 32%; and none 28%.

The representatives were also asked whether garnishment was a problem among their membership: 36% answered "yes," and 64% answered "no."

[43] The delinquency rate on installment credit has been estimated at between 1% and 2%. *Proceedings,* App. A (letter from Robert Kopriva, Associated Credit Bureaus of California).

[44] *See* note 87 *infra.*

[45] Studies show a sharp awareness of garnishment among bankrupts. In a study of 84 bankrupts in Michigan, 75% said that garnishment or the threat of garnishment was the reason they filed bankruptcy. Dolphin, *An Analysis of Economic and Personal Factors Leading to Bankruptcy,* 18 Bureau of Business and Economic Research, Michigan State University Graduate School of Business Administration, Occasional Paper no. 15 (1965). In another study in Illinois, 35 of 73 bankrupts said the threat of garnishment or the fear of job loss caused them to file bankruptcy. STABLER, THE EXPERIENCE OF BANKRUPTCY 7(1966). These sources and others are cited by Professor Vern Countryman in testimony before a subcommittee of the House Committee on Banking and Currency. *Hearings 726. See also* note 132 *infra.*

[46] Employer Survey. Employers were asked how many of their employees quit rather

Of course, creditors bring other pressures to bear in addition to the threat of garnishment. All the collectors interviewed said they send collection letters to all of their accounts, and while over 80 percent of these letters make some mention of legal action only 20 percent mention wage garnishment specifically. Collectors in the Seattle sample frequently use the telephone in attempts to contact debtors, but only a few visit debtor's homes.[47]

If other methods of persuasion fail, creditors will resort to legal action; this usually involves a garnishment,[48] and generally a garnishment prior to judgment.[49] Prejudgment garnishment was originally designed as an extraordinary remedy to be used primarily for the purpose of preventing a debtor from leaving the jurisdiction.[50] Washington, however, requires only an affidavit that the debt is "just, due and unpaid" and that the writ "is not sued out to injure either the defendant or the garnishee."[51] In the collector survey, those creditors who used prejudgment garnishment cited a belief that the debtor was about to leave town as the most common reason for using the remedy, but a large number also mentioned negative responses to collection letters and other contacts as important factors.[52] It is un-

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than have their wages garnished; of the employers interviewed 38.1% answered "none"; 41.2% answered "few"; 5.9% answered "some"; 8.7% answered "many" and 5.9% did not know. It is significant that even a few employees feel threatened enough by the possibility of garnishment to leave their job to avoid it.

[47] Collector Survey. Examples of dun letters mentioning the possibility of wage garnishment may be found in *Hearings* at 1025-26. One of the letters contained the following postscript:

> (ATTENTION: In addition to the above, it has been our experience that when we attach a debtor's wages, his employer is inclined to discharge said employee since attachment causes the employer additional expense in keeping special records for the sheriff's or marshal's office regarding your wages. It is not our desire to cause undue hardship, so please be guided accordingly.) COOPERATION COSTS LESS THAN LEGAL ACTION! YOU ALONE CONTROL YOUR NEXT MOVE!

[48] In the Collector Survey, 73.1% of the collection agencies indicated that they use wage garnishment more often than other types of legal action. This is reflected in the case filings in the Seattle District Justice Court. Of 36,046 cases filed, 15,624 were garnishments. *See* note 7 *supra*. However, each garnishment must be accompanied by or preceded by a main action on the debt, which must be filed separately. These main actions are included in the 36,046 total. Therefore, it is reasonable to estimate that 85% of these cases will eventually involve a garnishment.

[49] *See* Appendix, Table 2.

[50] *Cf.* 52 IOWA L. REV. 543, 547-48 (1966).

[51] WASH. REV. CODE § 7.32.010 (1956); WASH. REV. CODE § 12.32.010 (Supp. 1967).

[52] Collector Survey. Collectors were asked what factors influenced the decision to use prejudgment garnishment. They were given the following choice of answers: (a) Type of debt (list type); (b) Number of other debts of debtor; (c) Credit rating of debtor; (d) Belief that debtor was about to leave town; (e) Negative or no response to dun letters and other contacts; (f) Other. The responses of those sampled

likely that the 57.2 percent of the debtors whose wages were garnished prior to judgment during the period surveyed[53] were, in reality, "about to leave town." Instead, creditors probably initiate the majority of their justice court suits by a prejudgment garnishment because this form of action, combined with the low wage exemptions allowed, often applies sufficient pressure to bring the debtor into the creditor's office to arrange a method of paying the debt.[54]

Unfortunately, once a debt is in the hands of a collection agency a debtor very seldom escapes by paying the original debt alone. Additional charges, including attorney fees, collection charges, interest and service fees, may be added to the original obligation and demanded from the debtor when he comes to the creditor's office.[55] Collectors, when interviewed, were reluctant to discuss these charges, and usually confined themselves to the statement that they charged "all lawful costs," or refused to answer at all,[56] but some indication of the charges added can be gained from a perusal of the complaints filed by collectors in justice court. Many of these complaints asked fees in amounts greater than eventually allowed by the court.[57] Affidavits are on file at the Washington State Attorney General's office containing allegations that creditors have demanded fees more than double the original obligation.[58]

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were: (a) 9%; (b) 0%; (c) 9%; (d) 30.3%; (e) 24.2%; (f) 9%; and 18.5% did not answer. Discussions with some creditors, however, cast doubt upon the reasonableness of concluding that a primary factor in the decision to use prejudgment garnishment is a genuine belief that a debtor is about to leave town. *See* text accompanying note 64 *infra*.

[53] Of the garnishment actions in the justice court survey, 57.2% were prejudgment garnishments. In addition, several of the executions were on judgments resulting from actions originally initiated by a prejudgment garnishment. *See* Appendix, Table 2.

[54] Judge Lewis, Seattle District Justice Court, contends that creditors are using the court system merely to get the debtor into their office where they get him to sign a note for the amount claimed, including exorbitant costs. Interview with Judges Hoar, Lewis, and Starr, Seattle District Justice Court, Aug. 18, 1967.

[55] *Id.*

[56] Collector Survey. Of those interviewed, 46% said they included "all lawful costs" in these renegotiated contracts, while 23% did not answer at all.

[57] Justice court judges will exercise their discretion to cut down "unreasonable" attorney's fees and interest charges. Interview, *supra* note 54. A few instances were noted in compiling the justice court survey. Anything labelled a "collection charge" was usually not allowed, and attorney's fees were occasionally reduced. For a detailed discussion of fees allowed by the courts, see text accompanying notes 167 through 178 *infra*.

[58] Affidavits on file at the Washington State Attorney General's Office, Consumer Protection Division, Seattle. The authors have agreed not to print the details of these affidavits.

An example of the fees demanded by a creditor before settlement is found in *Hearings* at 1025, where the creditor added $58 in fees to a $16 debt.

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.[59] After the debtor signs such a contract, the creditor will usually release his wages, perhaps retaining the initial payment on the renewed obligation. The main action on the debt, however, will be continued to judgment,[60] usually a judgment on default of the defendant-debtor.[61] Even though the costs allowed by the court may be lower than those incorporated in the new obligation, creditors evidently believe that having an enforceable judgment on the original debt gives them some security against the debtor's defaulting on the renewed obligation.

Creditors differ in their attitudes toward prejudgment garnishment. Of the collectors interviewed, one-third reported using the remedy at least sometimes, while over half claimed they seldom used it. Some creditors apparently use a prejudgment garnishment in every legal action possible, while others use it only a few times a year.[62] Most would not favor abolishing prejudgment garnishment[63] but one member of a vocal minority made the following remarks:

> Abolition of prejudgment garnishment would eliminate ninety-five percent of the abuse in the present system. Fly-by-nights and unscrupulous collection agencies use it to exact exorbitant collection charges.... The argument that prejudgment garnishment is necessary to catch someone about to leave town is a lot of bunk. I know of only one such case in forty-five years experience.[64]

Commentators and judges have echoed this view, characterizing

[59] Collector Survey. The collectors interviewed were asked how often they negotiated a new contract or payment schedule with debtors who come to their office; 40% answered "very often"; 24% said "sometimes"; and 20% answered "seldom"; while 16% did not reply. Many of those who answered "seldom" indicated that they usually handle small debts which they can collect in one wage garnishment. On such small debts, the agency simply demands complete payment.

[60] Collector Survey. Collectors were asked, "If the debtor comes to your office and makes satisfactory arrangements, do you let the main action run to judgment?"; of those sampled 36% said "very often"; 16% "sometimes"; 16% "seldom"; and 32% refused to answer.

[61] *See* Appendix, Table 3.

[62] Collector Survey.

[63] Collector Survey. Of the collectors interviewed 22.2% favored abolishing prejudgment garnishment with 59.3% opposed, and 18.5% expressing no opinion.

[64] Collector Survey. Interview with Mr. Glen B. Faulk.

garnishment prior to judgment as a form of "blackmail" which should be abolished.[65]

Most of the collectors interviewed, however, appeared reasonably satisfied with the present state of Washington's garnishment laws. This is not surprising since wage garnishment provides creditors with a quick and relatively inexpensive method of enforcing collections. Legislative revision of garnishment should balance the service the law presently provides for creditors against the burdens it imposes on other segments of our society.

III. THE EFFECT OF WAGE GARNISHMENT ON EMPLOYERS

The employer is the often ignored man in the middle of the wage garnishment process. Yet, employer discharge of garnished employees, or fear of this discharge, may be the primary factor in making garnishment an effective creditors' tool.[66] It is also the primary cause of the burdensome social costs associated with the remedy.

In 1865 the Pennsylvania Supreme Court gave the following reason why the Pennsylvania State Legislature abolished wage garnishment:

> [Q]uite likely they [the legislature] had in view ... the ... inconvenience ... of manufacturers and other large employers being harassed with attachment execution ... complicating accounts, accumulating costs, and, depriving them of the laborers on whom they depended, by divert-

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[65] *See* Note, *Garnishment in Kentucky—Some Defects*, 45 KY. L.J. 322, 327-28 (1956) [hereinafter cited as 45 KY. L.J. (1956)] (quoting Robert Caldwell, a Kentucky attorney):

> The result in many cases is vicious, allowing "loan sharks and collection agencies practically to blackmail a debtor by tying up his wages in advance of proving the validity of their claim, and without prior notice of intent to attach."

See also Brunn, *supra* note 36, at 1248. The proposed Uniform Consumer Credit Code prohibits garnishment prior to judgment. UNIFORM CONSUMER CREDIT CODE § 5.104 (Tent. Draft No. 2, Working Draft No. 4, 1967).

Judge Patterson, Everett District Justice Court, opposes garnishment prior to judgment (*see* Foreword *supra*), and all three judges interviewed at the Seattle District Justice Court favor some restrictions of the remedy. Interview with Judges Hoar, Lewis and Starr, *supra*, note 54.

But see Note, *Garnishment in Florida: Analysis, Assessment, and Proposals*, 19 U. FLA. REV. 99, 102 (1966): "The need for such a procedure prior to judgment is obvious...." *See also* 1967 WIS. L. REV. 759, 768-69, 772-73, where the recommendation to retain prejudgment garnishment is reached, primarily on the basis that the presence or the absence of the remedy makes no difference because most cases will, in either event, result in a default judgment against the debtor for a failure to appear.

[66] *See, e.g.*, Conrad, *An Appraisal of Illinois Law on the Enforcement of Judgments*, 1951 U. ILL. L.F. 96, 100:

> In fact, the wage garnishment is practically useless as a means of catching accrued wages in any substantial amount. Its usefulness is based on the fact that most employers dislike to be garnisheed, and will threaten to fire an employee whose creditors garnishee them. To avoid being fired, the debtor may agree to pay a reasonable proportion of his wages each week to the creditor.

ing wages from the current support of the laborer's family to the paying of former debts.[67]

Since 1865, the Pennsylvania court, as well as courts and legislatures in other states, have largely overlooked the burden which wage garnishment places upon the employer.[68] The United States Supreme Court, in response to a contention that garnishment violated the employer's right to due process stated: "The suggestion that a substantial constitutional right of the garnishee is impaired because he may be put to some additional expense of bookkeeping in keeping his account with the judgment debtor, is plainly without merit."[69]

"Some additional expense" can be quite substantial, particularly in large firms. Notices or writs of garnishment are usually served by knowledgeable creditors on the day before payday, and may be "delivered to big firms in bundles."[70] The Boeing Company, Washington State's largest employer, is now served with over 500 writs of garnishment per month.[71] Boeing's Commercial Airplane Division presently employs five clerks and a supervisor to check payroll records and answer these writs. Although Boeing ordinarily processes its payroll by computer, the accounts of employees whose wages are garnished must be calculated by hand[72] because the writ frequently catches only a portion of the wages which will be paid during a pay period. As a result, one check must be "split."[73] Also, atforneys retained by the company spend considerable time with wage garnishments. In addition to such expenses, many companies also lose the time their employees spend consulting the garnishment clerk or personnel department, and going downtown to the courthouse or the creditor's or collector's office. Furthermore, if a company does fire an employee, additional costs are incurred in hiring and training a replacement. The Boeing Company spends approximately $200,000 per year as a

[67] Firmstone v. Mack, 49 Pa. 387 (1865).

[68] *See* Comment, *Garnishment of Wages in Pennsylvania: Its History and Rationale*, 70 DICK. L. REV. 199, 200 (1966).

[69] Endicott Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285, 290(1924).

[70] *Hearings* 1017.

[71] Minutes, Washington State Legislative Council, Judiciary Committee 3 (Nov. 10-11, 1967) [hereinafter cited as *Minutes*] (testimony of Mr. Nyle G. Barnes).

[72] Interview with officials of the Boeing Company, Aug. 3, 1967.

[73] For example, The Boeing Company pays its employees every two weeks on Friday. Each paycheck represents wages earned during the two weeks ending the previous Saturday. Thus, a writ of garnishment served on a Thursday will catch not only the entire pay check due on the next day, Friday, but also up to four days wages from the check following that. Therefore, the latter check must be "split." In addition, if the employee claims an exemption, the company must issue him a check for the exempt amount.

direct result of garnishments against Boeing employees.[74]

In addition to monetary outlay, employer-garnishee defendants are also exposed to possible liability in default for failure to answer the writ on time.[75] Large firms with efficient clerical staffs and readily available legal advice are rarely held liable in default; however, the owners of small firms with few employees may not be familiar with writs of garnishment or may not answer the writ for other reasons, with the result that judgments for the entire claim may be entered against them.[76] Recent amendments to Washington's garnishment laws, requiring that answer forms with detailed instructions and stamped, addressed envelopes be included with the writ, should alleviate the problem of defaults against small employers.[77]

To reduce the expense and nuisance of wage garnishments, and the possibility of default liability, most employers have adopted policies of discharging their employees after one or more garnishments.[78]

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[74] *Minutes* 30. Of this amount $120,000 represents direct expenses for clerical costs, salaries for supervisors, etc., and the balance represents indirect expenses such as the value of time lost by employees.

The Cook County Credit Bureau in Chicago surveyed 1,100 employers in 1964 and found that processing a single garnishment costs a company from $15 to $35. The estimated cost of garnishment to the surveyed employers totaled $12 million annually. Wall Street Journal, March 15, 1966, at 18, col. 2.

In Washington an insignificant amount of these costs is recovered through legal fees paid to the garnishee defendant by virtue of WASH. REV. CODE §§ 7.32.290, 12.32.210 (1956). The Boeing Company's figures for the first three months of 1967 average about $750 per month, which would total $9,000 per year in legal fees paid to Boeing either by the plaintiff or by the principal defendant.

Expense to the employer, however, must be viewed in perspective. The $200,000 per year Boeing spends on wage garnishments is insignificant when compared to the company's annual operating expenses.

[75] WASH. REV. CODE §§ 7.32.170, 12.32.120 (1956).

[76] The survey of justice court files showed a default judgment against the garnishee defendant entered in 8 out of 187, or 4.3% of the cases. These judgments were entered against three restaurants, two import houses, one tavern, one pharmacy, and one paint company.

[77] Ch. 142, 143 [1967] Wash. Sess. Laws 903, 919. *See* note 22 *supra.*

Another factor reducing the risk of default, and perhaps the monetary expense incurred by the garnishee defendant, is the high percentage of discharges given the garnishee defendant. In 78.4% of the cases in the Seattle sample the garnishee defendant was discharged. Appendix, Table 5. These discharges often occurred within two or three days after the writ was served, thereby eliminating the costs of any clerical work not yet completed by the employer.

[78] Seattle employers were asked if they discharged their employees for garnishment primarily because: 1) bookkeeping and other related expenses render garnishment an unjustifiable nuisance, or 2) frequent garnishments are such evidence of an employee's bad character and poor credit management as to make him a poor employment risk. By their replies, 53.1% of those interviewed indicated that expenses related to garnishment were their primary reason for discharging employees while 46.9% cited garnishment as evidence of poor character. *See also* Felsenfeld, *Some Ruminations About Remedies in Consumer-Credit Transactions,* 8 B.C. IND. & COMM. L. REV. 535, 565 (1967).

While these policies vary widely in form and application, surveys in Seattle and San Diego,[79] plus less systematic reports from other areas,[80] show conclusively that the majority of employers will discharge their employees for garnishment. This majority approaches unanimity among large manufacturing firms whose employees are often semi-skilled or unskilled and are more frequently garnished.[81]

A number of firms have flexible policies of discharge for garnishment. This flexibility, more desirable on its face than a flat "one garnishment and you're out" rule, lends itself to coercion and discrimination. An example is the Boeing Company's rule that an employee is subject to "discharge, or lesser disciplinary action" if his wages are garnished twice within a twelve month period.[82] The choice of action to be taken is left to the discretion of his supervisor, whose decision may be influenced by extraneous matters such as personal likes, dislikes or moral outlook.[83] Other firms state that

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[79] The Seattle employer survey revealed that 45% of employers sampled had a definite policy regarding discharge for garnishment while 55% did not. Of those answering, 19% said they "always" discharged an employee for wage garnishment; 54% said they "sometimes" discharged garnished employees (many of these had policies of discharging after two or three garnishments, but others had no definite policy); however, only 27% of the employers interviewed stated that they "never" fired an employee because his wages were garnished. Employer Survey. A similar survey conducted in San Diego reveals that only one out of 72 firms discharged an employee after the first garnishment (the rest, however, warned the employee); 17% fired the employee after the second garnishment; 49% after the third garnishment; while 18% did not take disciplinary action for garnishments. *Hearings* 1020-21.

[80] A study examining garnishment cases in the Wisconsin cities of Green Bay, Kenosha, Racine, and Madison revealed that 11% of the garnished employees were fired forthwith, 41% were warned of dismissal, and in 15% the employer tried to help the employee. 1967 WIS. L. REV. 759, 766 n.29. There was no indication in cases involving warning or discharge whether the employee had been garnished previously.

Other examples of employer policies with respect to discharge are contained in: Wall Street Journal, March 15, 1966, at 18, col. 2; *Proceedings* 19, 63-65; *Hearings on S. 750 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 88th Cong., 1st Sess., pt. 1 at 287 (1963); 45 KY. L.J. 322, 330 n.58 (1956).

[81] The Seattle employer survey reveals that only 8.3% of the firms with over 250 employees never discharge an employee for garnishment, while 34.8% of those firms with under 50 employees never discharge an employee for garnishment. The percentage of firms which fire an employee after the first garnishment is about even for both groups—25.0% for the large firms and 26.1% for the small firms. For a description of the employer survey, see note 20, *supra.*

[82] This rule is contained in a little booklet entitled "Plant Rules" which is distributed to new employees. Copies of these rules are also posted on bulletin boards throughout the plant.

[83] As an example of the extreme variations possible under this rule there is, at least according to information given us in numerous personal interviews, a certain anonymous employee at Boeing who has managed to survive fourteen to eighteen garnishments (depending on who was telling the story) without being fired. If this individual really does exist, he would no doubt be amused to know that he is a living legend throughout the Seattle credit industry.

they will not fire a "valued" employee.[84] When management exercises this type of discretion it will be more likely to discharge an employee who can be inexpensively replaced. Thus the unskilled wage earner is likely to be fired after fewer garnishments than his skilled or salaried counterpart.[85] This is unfortunate because the unskilled worker is more likely to be living from hand to mouth, heavily dependent upon each week's paycheck;[86] he is more likely to be further in debt; and he is also more apt to be a member of a minority group already somewhat disenchanted with our legal system.[87] In addition, a discretionary policy of discharge for garnishment may enable management to institute layoffs without conforming to seniority requirements or other provisions of its union contract.[88]

Another flexible policy in addition to considering an employee's "value" is a policy of not discharging a man believed to be making a good faith effort to arrange a satisfactory settlement with his creditor.[89] An employer may adopt this approach if his primary concern is to avoid successive garnishments by the same creditor. In some cases, however, this has a coercive effect on the employee by dis-

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[84] The "value" of an employee as a factor in the decision whether or not to discharge was mentioned occasionally during the Employer Survey, usually by owners or managers of light manufacturing industries employing highly skilled workers who are difficult to replace. Other elements apparently included in the judgment of an employee's "value" are the length of time an employee has been with the company, and his past work performance.

[85] Also, marginal employees are much more likely to be garnished in the first place because of credit problems arising from prior unemployment. Murphy, *Proposed Consumer Credit Legislation*, 48 CHI. B. REC. 157, 166 (1967).

[86] The Department of Labor estimates that the average family spends currently between 85% and 90% of its income for necessities. BUREAU OF LABOR STATISTICS REP. No. 237-93, CONSUMER EXPENDITURES AND INCOME 1 (1965). The percentage is no doubt even higher for families in which the wage earner is an unskilled laborer.

[87] Florence M. Rice, Director of the Harlem Consumer Education Council, characterized garnishment as "an evil racket in our community which serves to keep poor people locked in poverty. Among the low-paid poorly educated a credit sale is often made with no other thought but to garnishee the customer's salary." *Hearings on H.R. 7179 Before a Subcomm. of the House Comm. on Government Operations*, 89th Cong., 2d Sess., at 180 (1966). Statements of the role garnishment plays in schemes to defraud Puerto Ricans who speak little English are contained *id* at 175 (testimony of Mrs. Aponte), and in LEGAL SERVICES DIVISION OF THE OFFICE OF ECONOMIC OPPORTUNITY, THE POOR SEEK JUSTICE 16 (1967).

[88] The discharge of a union member for wage garnishment is not a per se discriminatory discharge prohibited by the National Labor Relations Act § 8(a) (3), 49 Stat. 453 (1935), *as amended*, 29 U.S.C. § 158(a)(3) (1952). *See* Note, *State Wage Exemption Laws and the New Iowa Statute—A Comparative Analysis*, 43 IOWA L. REV. 555, 567 n.75 (1958), and cases cited therein; *see also* note 105 *infra*.

[89] A standard of this nature was mentioned a few times during interviews with employers. Such a policy could encompass anything, from requiring a penitent attitude of the employee to a mere attempt to make sure that he will not ignore a large debt completely.

couraging his recourse to the courts and forcing him into an unequal bargaining position with his creditor.[90]

Several of the employers interviewed take more constructive action which may reduce the number of garnishments served on their employees. This usually takes the form of credit counselling.[91] However, only 7.9 percent of the employers in Seattle provide credit counselling on a regular basis; an additional 34.3 percent give credit counselling on an informal basis whenever desired.[92] Once an employee is garnished, his employer usually prefers to remain neutral. Only 32.1 percent of the Seattle firms inform their employees of the availability of wage exemptions, and only 20.6 percent counsel a garnished employee as to the legal steps he might take.[93] Thus, most employers deal with the credit problems of their employees only in a negative manner by firing those whose wages are too frequently garnished.

Evidently, the majority of the employers interviewed do not believe that the costs or inconvenience of wage garnishment are so great that they would advocate its abolition.[94] Rather, they would accept some garnishment expense as a cost of doing business, while trying to minimize that expense by discharging employees who are, in their opinion, garnished too frequently. However, in seeking to avoid the costs of garnishment in this manner, employers may be shifting disproportionate burdens to other segments of society—burdens reflected in increased costs of welfare payments, unemployment compensation, and maintenance of municipal and bankruptcy courts.

IV. The Effect of Wage Garnishment on the Debtor

The average person subjected to a wage garnishment is not protected by the legal provisions designed to protect him. His wages

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[90] Sometimes a firm will go so far as to send the employee to see the collection agency, or else call the agency and negotiate an agreement on behalf of their employee. *Proceedings* 88.

[91] One owner of a small firm said that he will make personal loans to his employees. (Employer Survey). Employees of many of the larger firms also have access to credit unions, provided either by the employer or by the union.

Boeing's Personnel Relations Department estimates that 80% of their dealings with employees concern debt problems. Interview with Pat Greiner, Personnel Relations Dept., the Boeing Co., July 14, 1967.

[92] Employer Survey. An additional 31.4% of those sampled provide informal credit counselling on an occasional basis. Of the employers interviewed, 2.9% always guide their employees toward outside credit counselling; 29.4% do so occasionally.

[93] *Id.*

[94] *Id.* Seattle employers were asked whether they favored abolishing wage garnishment; of those surveyed 12.8% answered "yes," 84.6% answered "no," and 2.6% ventured no opinion.

are garnished before he is served with notice of suit; he does not claim a wage exemption; and the subsequent judgment against him is most often by default. He usually responds to the claim without seeking the advice of an attorney and without setting foot inside a courthouse. To a large degree, debtors' problems with wage garnishment can be traced to prejudgment garnishment, employer policies of discharge for garnishment, the low wage exemption, lack of information, and a general alienation from our legal system.

The procedure usually followed in prejudgment garnishments in King County is to file the complaint and the writ of garnishment simultaneously.[95] In a justice court proceeding, the plaintiff then has fifteen days to serve the writ on the employer and to serve the notice of suit and complaint on the debtor.[96] The writ of garnishment is almost always served upon the employer at least one day before the debtor is served with the complaint. In many cases the complaint is served several days after the writ.[97] There are several reasons for this: first, the plaintiff with little expense can readily discover if the debtor has recently quit his job by preliminarily serving the employer;[98] second, the employer, with regular working hours and a definite place of business, is considerably easier to serve than a debtor, who usually must be served in the evening and who may frequently change residences; finally, many collectors deliberately try to surprise the debtor with a wage garnishment for fear that he will quit his job and leave town if he hears of a legal proceeding against him.[99] Because the writs are frequently served upon the employer on the afternoon before payday, a large employer may not have time to

[95] This is evidenced by the dockets of the Seattle District Justice Court, where the main action and garnishment action are usually recorded on consecutive pages with identical filing dates.

[96] This is assuming the return date is set at the twenty day maximum allowed by the court rules. *See* WASH. CIV. R.J. CT. 4(b), (e).

[97] A study of 44 cases of prejudgment garnishment in which both the writ of garnishment and the notice of suit were served reveals that in 37 of these cases the writ of garnishment was served on the employer garnishee at least one day before the notice of suit was served on the principal defendant. The median difference between the two dates of service was 5 days. This was also the mode. Taking an arithmetic average, the notice of suit was served on the debtor 5.8 days after the writ of garnishment was served on his employer. In the majority of cases the fact of garnishment was thus the first notice to the principal debtor that legal action was being taken against him. Justice Court Survey.

[98] Another advantage in serving the employer first is that the debtor, upon being notified that his wages have been garnished, may go immediately to the creditor's office, where the creditor will serve him with the complaint or at least obtain the debtor's current address. The authors have been unable to determine to what extent this actually occurs.

[99] *See* note 52 *supra* and accompanying text.

notify an employee that his wages have been garnished prior to the time he is to pick up his check. Thus, an employee may first learn of the legal proceedings against him when he opens his pay envelope and finds a notice that his wages have been garnished.[100]

In Washington a garnished employee may claim a wage exemption of up to fifty dollars per week.[101] These exemptions, however, are not automatically granted; in justice court cases the debtor on his own initiative must claim his exemption at the office of the court clerk.[102] As a result, exemptions were claimed in only seven percent of the cases in the justice court sample.[103]

One of the several reasons for the low number of wage exemptions claimed appears to be that most debtors are unaware of the existence of statutory exemptions.[104] As a rule, in justice court cases the debtor does not retain counsel who would inform him of his right to an exemption. The labor unions contacted do not generally disseminate information on the exemption law.[105] Furthermore, most employers

[100] Interview with officials of the Boeing Company, *supra* note 72.

[101] WASH. REV. CODE § 7.32.280 (Supp. 1967), quoted *supra* note 30.

[102] See note 31 *supra*.

[103] Appendix, Table 6. The same phenomena have been noted in other states without automatic exemptions. *See* Lee, *An Analysis of Kentucky's New Exemption Law*, 55 KY. L.J. 618, 624-25 (1967); 1967 WIS. L. REV. 759, 765; *Hearings* 1036.

[104] Interview with officials of the Boeing Company, *supra* note 72.

[105] Union Survey. Only 12% of the union representatives interviewed make information available to their members on what to do if their wages are garnished. The WASHINGTON STATE LABOR COUNCIL REPORTS, Dec. 20, 1967, contain a reproduction of a sheet distributed by the Seattle Legal Services Center entitled "How to Protect Yourself from Wage Garnishments," which contains information about the wage exemption. It is not known how widely this was distributed.

Most labor unions do not take direct steps to alleviate the problems caused by wage garnishment. Although 36% of the union representatives interviewed reported that garnishment is a problem for their membership, only 12% said their unions distrubute any information to their members explaining what steps an employee can take if his wages are garnished. Only 16% of the unions contacted have any program of credit counseling for their membership; this is usually provided through union operated credit unions. Union Survey.

Unions can also encourage members discharged because of garnishment to seek recourse through grievance procedures. *See* Aero Mechanic, Dec. 11, 1967, at 4, col. 3 (a union newspaper published by District Lodge 751, Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO). An analysis of arbitration cases shows that arbitrators order reinstatement of employees discharged for garnishment in about half the published cases. Generally, the arbitrators apply three tests: 1) Was the discharge rule reasonable and well publicized? 2) Was the discharge nondiscriminatory? 3) Were there any extenuating circumstances favoring the worker? Usually a rule providing for discharge after the first garnishment is held unreasonable. *See* Fisher, *How Garnished Workers Fare Under Arbitration*, MONTHLY LABOR REV., May, 1967, at 1-6. *See also* note 88 *supra*.

Unions may also protect their members' interests by lobbying in Congress and state legislatures; they have been active in lobbying for restrictions on wage garnishment. Union leaders have testified for this purpose before Congress. (*See, e.g., Hearings* at 749 (testimony of I. W. Abel, President, United Steelworkers)), and before the California State Assembly (*Proceedings* 60 (testimony of Don Vial, Cali-

apparently feel obliged to remain "neutral" in a garnishment action and refrain from giving any advice on garnishment laws to their employees. Less than a third of the employers interviewed inform their employees of the availability of wage exemptions, although a few will tell an employee about the exemption if he specifically requests this information.[106] Notwithstanding the above, knowledge of the wage exemption is apparently becoming more widespread, perhaps because of an influx of employees from states where wage exemptions are more meaningful.[107]

Even if an employee is aware of the wage exemption, the cost and nuisance involved in claiming the exemption is another factor working against its use. An employee working day shift in the industrial complex south of Seattle will have to take time off from work, procure transportation for the five to fifteen mile trip to the courthouse, and, if he wishes to defend on any ground, pay $1.50 filing fee in order to claim his exemption.[108] The cost and nuisance, perhaps not

fornia Labor Federation)). The Washington State Labor Council has passed a resolution urging the state legislature to enact reforms in wage garnishment practices, Washington State Labor Council, Res. No. 52 (Aug. 31, 1967), and union leaders have testified before the Judiciary Committee of the State Legislative Council suggesting that garnishment be abolished. *Minutes* at 2 (testimony of Mrs. Lorraine Wojahn, Wash. State Labor Council).

However, unions are rarely successful in efforts to insert a provision into the collective bargaining contract limiting an employer's right to discharge an employee whose wages have been garnished. In fact, some union contracts specifically recite the employer's right to discharge for garnishment. *See, e.g.*, Brunn, *supra* note 106 at 1229-30; 45 KY. L. J. 322, 330 (1956). Of the Seattle area unions interviewed, only one had even attempted to negotiate for a provision limiting discharge, and that attempt failed. Union Survey.

Thus, where they potentially could have great impact in face-to-face negotiations with employers, unions have been unsuccessful in significantly alleviating the problems which wage garnishment poses for their membership. Fortunately, as a group they have shown themselves to be both more aggressive and more effective in the public arena, providing information and lobbying for legislative change—admittedly a traditional area of expertise for unions and perhaps their forte on issues such as wage garnishment.

Generally, union representatives are not satisfied with Washington's present garnishment provisions. In the union survey, 92% of the union representatives believe the present wage exemption is inadequate; 83% favor an automatic exemption; 76% favor abolition of prejudgment garnishment; but only 48% favor abolishing wage garnishment completely (20% expressed no opinion).

Unions generally feel that discharge for garnishment smacks of employer interference with an employee's private life. Fisher, *supra* at 1. 72% of the union representatives interviewed in the Seattle area favor abolishing discharge for garnishment. Union Survey. Interestingly enough, 60% of the Seattle collectors sampled agreed with them. Collector Survey.

[106] Employer Survey.

[107] Interview with officials of the Boeing Company, *supra* note 72.

[108] In addition, he runs the risk of confessing judgment in the office of the clerk. Of the 9 cases of prejudgment garnishment in which exemptions were claimed the debtor confessed judgment in 6. *See* Appendix, Table 6. When debtors appear at the office of the clerk, they are often asked whether they wish to confess judgment. It

determinative in itself, may become significant when combined with other factors that discourage use of the wage exemption.

A person whose wages have been garnished prior to judgment has a choice between alternative courses of action. First, he can ignore the judicial system, go to the creditor's or collector's office, and negotiate a new note or payment schedule covering the debt. The collector usually with then move to discharge the employer-garnishee, thus releasing the debtor's paycheck; the action on the underlying debt, however, will be continued to judgment.[109] Alternatively, rather than negotiate with the creditor, the debtor can claim his exemption, and wait for the debt to be reduced to judgment. If he does so, the creditor, of course, will not release his wages. The apparent advantage of the second alternative is that the costs and fees added to the original debt are subject to the court's scrutiny, while if negotiations take place in the collector's office the debtor may become obliged to pay collection charges that would not be authorized by a court.[110] This advantage, however, is outweighed by severe disadvantages.

If he chooses not to negotiate with the creditor the debtor can immediately recover, at most, the amount of the statutory exemption. If the garnishment caught two weeks' pay, the exemption allows a debtor with three dependents to retain one hundred dollars;[111] he will not receive the remainder of his paycheck for at least twenty days,[112] or as much as sixty days if he chooses to assert a defense at trial.[113] For a person supporting a family one hundred dollars is hardly adequate to cover two weeks' expenses without incurring more debts or skipping payments to other creditors.[114] The inadequacy of the amount of the exemption is clearly an additional reason why few

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would be interesting to know whether those who confess judgment realize the legal significance of their action.

Confessions of judgment in Washington are governed by WASH. REV. CODE §§ 4.60.010-.070 (1956). WASH. REV. CODE § 4.60.040 (1956) reads as follows:

> *Confession, how made.* The confession and assent thereto shall be in writing and subscribed by the parties making the same, and acknowledged by each before some officer authorized to take acknowledgments of deeds.

As a practical matter, all judgments by confession in justice court garnishment actions are subscribed by debtors in the clerk's office.

[109] *See* note 60 *supra* and accompanying text.

[110] *See* text accompanying notes 56 through 59 *supra.*

[111] WASH. REV. CODE § 7.32.280 (Supp. 1967), quoted *supra* note 30.

[112] In justice courts the return date can be set a maximum of twenty days after filing. WASH. CIV. R.J. CT. 4(b). The normal procedure is to set the return date at the twenty day maximum.

[113] See Judge Patterson's foreword to this project.

[114] *See* note 86 *supra;* Brunn, *Wage Garnishment in California: A Study and Recommendations,* 53 CALIF. L. REV. 1214, 1228-29 (1965).

wage exemptions are claimed. Quite simply, the creditor can offer a better deal. By negotiating with his creditor immediately, the debtor can recover his paycheck within two or three days after it is garnished, although he may be required to pay the first installment on the renewed obligation.[115] The low wage exemption in Washington, then, discourages a debtor's recourse to the courts and places him in an unequal bargaining position with his creditor.

In municipal courts throughout the country a high number of default judgments are commonly entered.[116] The justice courts of King County are no exception. In 55.6 percent of the garnishment actions surveyed the main action on the debt resulted in a default judgment.[117] Alienation and frustration of debtors toward the legal system may partially explain the high incidence of default.[118] An additional explanation may be the combined effect of inadequate wage exemptions and prejudgment garnishment. The debtor is encouraged to respond to the legal action solely by negotiation with the creditor, while the creditor lets the main action run to default so that judgment will stand as security for the renegotiated obligation.[119]

A more serious question is whether prejudgment garnishment, by coercing debtors to negotiate with their creditors, also precludes the assertion of valid defenses at trial. A study in New York showed that default judgments were obtained in 95 to 99 percent of cases brought against low-income consumers, and that more than one-half of the defendants believed that they were victims of consumer fraud.[120] Although the Legal Services Division of the Office of Economic Opportunity in Seattle is concerned about defenses lost in pre-

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[115] *See* text accompanying note 59 *supra*.

[116] *See, e.g.*, 1967 WIS. L. REV. 759, 768. A survey of cases filed in Los Angeles Municipal Court reveals that answers to the complaint were filed in only 8% of 1,743 cases, and that 50.5% of the cases resulted in default judgments. *Hearings* 1036. Another study in New York indicates that over 97% of the cases brought by several Harlem merchants and 73.5% of the cases brought by Macy's, a large New York department store, ended in default judgments. *Installment Sales: Plight of the Low-Income Buyer*, 2 COLUM. J.L. & SOC. PROB. 1, 9 (1966), citing Schiffer, Default Judgments in the New York County Civil Court 12 (Sept. 1965).

[117] Appendix, Table 3.

[118] *See* note 153 *infra*.

[119] *See* text accompanying notes 60, and 111-115 *supra*. However, it is unlikely that the number of defaults would decrease substantially if prejudgment garnishment were abolished and the wage exemption raised, because the majority of the actions are based upon debts which are due and owing, and for which the debtor will not make an appearance. *Cf.* 1967 WIS. L. REV. 759, 768.

[120] LEGAL SERVICES DIVISION OF THE OFFICE OF ECONOMIC OPPORTUNITY, THE POOR SEEK JUSTICE 15 (1967).

judgment garnishments,[121] it is unlikely that the problem in Seattle has yet reached the magnitude observed in New York.

The problem of employee discharge has already been alluded to.[122] Even if an employee is not fired for the first garnishment, one garnishment will put an employee in serious trouble; his other creditors may view a wage garnishment as a danger signal of impending job loss or bankruptcy and themselves institute garnishment actions.[123]

Once fired because of wage garnishments a debtor may find it impossible to hold a steady job. When he applies for a new job, the job application forms will certainly inquire about the reason for his previous termination, and may specifically ask whether his wages have previously been garnished.[124] Further, while a debtor is out of work and looking for a new job, other debts will become past due, and a person fired for a wage garnishment usually will not have savings to tide him over a period of unemployment.[125] When he finally resumes employment a debtor may be subjected to further wage garnishments by his more shortsighted creditors—often with the result that he is fired again.[126] The debtor may thus find himself in the middle of a vicious spiral of steadily increasing debts and decreasing income.

A person may be caught in this trap if his source of income is temporarily cut off for any reason. For example, the following case was related by Estes Snedecor, an Oregon referee in bankruptcy:[127]

> Just the other day I had a bankrupt in court whose back was broken 3 years ago in an industrial accident. For over 2 years he and his family had existed on compensation from the Industrial Accident Commission. Then for six months or more on job training he became skilled for tech-

[121] Interview with Mr. Charles Ehlert, Seattle Legal Services Center, Feb. 23, 1968.

[122] *See* text accompanying note 79 *supra*.

[123] Brunn, *supra* note 114 at 1228-29.

[124] *See* Aero. Mechanic, Dec. 11, 1967, at 4, col. 3. *See also Proceedings* 63 (testimony of Mr. Don Vial, California Labor Federation, AFL-CIO) quoting from a letter received from a union member:

> ... Well, they attached and they got $80.00 or $90.00 and I got fired. Since last April I have not been able to get any kind of job in my field because they all checked and Dow [Dow Chemical Company, his former employer] says I was fired because of a wage attachment and the prospective employer treats me like I had ten tails and I think it is a stinking mess.

[125] A study of garnished debtors in Wisconsin reveals that their family's net income averaged about $90 a week. 1967 WIS. L. REV. 759, 767. "Most of the persons in debt have little savings," George Katona, Survey Research Center, Univ. of Michigan, reported in Wall Street Journal, May 3, 1967, at 1, col. 6.

[126] "Studies have shown that some of the hard-core unemployed are, in fact, unemployable because they have garnishment records." *Hearings* at 662 (testimony of Mr. David Caplovitz).

[127] Snedecor, *Why So Many Bankruptcies in Oregon?*, 40 REF. J. 78, 79 (1966).

> nical indoor work. Very soon after he obtained full time work and was released by the Accident Commission, his salary was garnished and being unable to maintain his family and meet the debts of his past misfortunes he resorted to bankruptcy in order to obtain a new start in life. It is not unusual for a collection agency to garnish the wages of some handicapped person trying to earn his living at the Good Will Industries in Portland.

Wage garnishment has a similar impact on welfare recipients. A study in Milwaukee of 634 general relief families who went off welfare during the months of October, 1964, and May, 1965, revealed that 23.3 percent had their wages garnished by February, 1966.[128] Almost a quarter of these were garnished within two to four weeks after returning to work, and another quarter were garnished within three months after returning to work. For many of these families garnishments "proved to be the final straws that broke the backs of their marginal subsistence and put them on welfare again, either through loss of job or loss of incentive to continue working."[129] It is a fundamental paradox of our society that we spend billions of dollars trying to help the poor through welfare programs, while maintaining collection laws which make it difficult for them to hold a steady job.

Many people seek to avoid the effects of wage garnishment by quitting their jobs before their wages are garnished;[130] a few have been driven to suicide by wage garnishment and its attendant problems;[131] but by far the most common method of attempting to avoid the welfare/unemployment trap threatened by wage garnishments is bankruptcy. Although it is difficult empirically to prove a direct cause and effect relationship, most authorities now agree that there is a correlation between the rate of personal bankruptcies and the exemption of wages from garnishment.[132] Referees in bankruptcy have

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[128] Huber, *Installment Credit Problems Among Welfare Recipients,* in *Hearings* at 1027-31.

[129] *Id.*

[130] *See* note 46 *supra.*

[131] "As you know, there have been many, many suicides reported in this country because of the garnishment laws." *Hearings* at 743 (testimony of Willard Wirtz, Sec. of Labor). For accounts of suicides related to garnishment, see Wall St. Journal, March 15, 1966, at 1, col. 6; *Hearings on S. 750 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 88th Cong., 1st & 2d Sess., pt. 2 at 866 (1964).

[132] *Hearings* at 794 (statement of Willard Wirtz, Sec. of Labor):

> I would agree that considerable evidence supports a conclusion that there is a correlation between consumer bankruptcies and wage garnishments. Our examination of the subject shows that there is a widespread opinion among judges, lawyers, economists and bankruptcy referees that there is a correlation.

described wage garnishment as "the most important" or "the one and only primary cause" of personal bankruptcies.[133] States which have abolished wage garnishment definitely have a lower bankruptcy rate,[134] and states which exempt from garnishment 80 to 90 percent of a debtor's wages also appear to have lower bankruptcy rates, although here the correlation is not so striking,[135] perhaps because the fear of job loss is a more significant cause of bankruptcy than the current loss of wages garnished.

Although a correlation between garnishment provisions and bankruptcy rates may be conceded, opinions differ about what conclusions should be drawn. Some creditors contend that "blaming bankruptcies [on] garnishment laws is like blaming traffic tickets on speed limits."[136] But this formulation overlooks the fact that many debtors who could pay their bills if given an opportunity essentially are driven by wage garnishment or the threat of wage garnishment to file bankruptcy.[137] Personal bankruptcies seldom leave any assets for distribu-

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Id. at 726 (testimony of Prof. Vern Countryman):

> To this I would like to add my own opinion, based on discussions with many Referees in Bankruptcy and bankruptcy attorneys, and on the examination of the files in hundreds of bankruptcy cases, that wage garnishment, either actual or threatened, is a precipitating cause in a very substantial number of personal bankruptcy cases.

In addition to the authorities cited in note 45, *supra* Professor Countryman also cited BROSKY, A STUDY OF PERSONAL BANKRUPTCY IN THE SEATTLE METROPOLITAN AREA 39 (1965), and MISBACH, PERSONAL BANKRUPTCY IN THE UNITED STATES AND UTAH 33 (1964), in support of his conclusion. Probably as a result of this and other similar testimony, the subcommittee reported the following conclusion to the House:

> The limitations on the garnishment of wages adopted by your committee... will relieve countless honest debtors driven by economic desperation from plunging into bankruptcy in order to preserve their employment and insure a continued means of support for themselves and their families.

H.R. REP. No. 1040, 90th Cong., 1st Sess. 21 (1967). *But see,* Herrmann, Causal Factors in Consumer Bankruptcy: A Case Study 32. (Institute of Govt. Affairs, U. of Cal., Davis, Occasional Paper Series No. 6 (1965)), where after a study of 74 cases the author concludes, "It is difficult to determine the extent to which fear of wage garnishment motivated the choice of bankruptcy."

Commentators in law reviews have generally asserted a relationship between wage garnishment and bankruptcy. *See, e.g.,* Brunn, *supra* note 114 at 1234-38; Conard, *An Appraisal of Illinois Law on the Enforcement of Judgments,* 1951 U. ILL. L.F. 96, 101; 1967 WIS. L. REV. 759, 761-62.

[133] Lee, *An Analysis of Kentucky's New Exemption Law,* 55 KY. L.J. 618, 630 (1967); Snedecor, *Consumer Credit and Bankruptcy,* 35 REF. J. 37, 38 (1961); *See* N.Y. Times, Aug. 12, 1967, at C11, col. 5.

[134] *See, e.g., Hearings* at 794 (statement of Willard Wirtz, Sec. of Labor); Snedecor, *supra* note 133.

[135] *See Hearings* at 726 (testimony of Prof. Vern Countryman).

[136] Letter from John W. Johnson, Executive Vice President, American Collectors Association, to the *Washington Law Review,* Jan. 22, 1968.

[137] *See* Snedecor, *supra* note 127, at 79:

> Now, what disturbs me most, is that our garnishment law affords these young people some justification for wiping out their debts in bankruptcy. Many of them

tion to creditors.[138] To the extent that fear of garnishment results in initiation of bankruptcy by people who would otherwise be able to pay, the losses borne by creditors and the administrative costs borne by the public are unnecessary.

Another opinion suggests that present high bankruptcy rates are the result of outmoded bankruptcy laws.[139] If any legislative change is to be made, it has been suggested that the Bankruptcy Act be amended so that the major avenue of relief for a distressed debtor becomes the wage earner plan,[140] whereby creditors' claims are satisfied out of future earnings pursuant to a court approved plan of composition or extension. Ordinary bankruptcy would be permitted only after a determination that the debtor could not hope to pay his debts.[141] Employers, however, dislike administering wage earner plans as much as they detest wage garnishments;[142] some are now asking prospective employees on job application forms whether they have ever declared bankruptcy.[143] If state garnishment laws could be amended so as to reduce unnecessary bankruptcies without imposing additional burdens upon employers, it would certainly be preferable.

The above discussion has assumed that bankruptcy is a viable avenue of escape from frequent garnishments and the consequent inability to hold a steady job. There are indications that this is not so. Many debtors reaffirm obligations discharged by bankruptcy.[144] Finance companies are often successful in avoiding discharge of their claim if the debtor neglected to include a complete list of his debts on the statement he filled out when applying for a loan.[145] There are even indications that some creditors are particularly eager to extend

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come to me after court is over to say that they would have been able in time to pay their just bills if they had been given an opportunity, but repeated garnishments had prevented them from holding steady jobs. Our present laws are causing them to lose their sense of obligation.

[138] Between 1953 and 1962, only 13% of the straight bankruptcy cases in the United States were "asset" cases in which there were assets available for creditors. In these cases, general creditors recovered an average of only eight cents on the dollar. Countryman, *The Bankruptcy Boom*, 77 HARV. L. REV. 1452, 1453-54 (1964).

[139] *See* Reed, *Study of Personal Bankruptcies in Oregon Indicates Need for Change in Bankruptcy Laws*, 21 PERS. FIN. L.Q. REP. 56 (1967).

[140] Chapter XIII of the Bankruptcy Act of 1938, *as amended*, §§ 601-86, 11 U.S.C. §§ 1001-86 (1958). For a description of the provisions and procedures of Chapter XIII, see *Consumer Credit Symposium: Developments in the Law*, 55 NW. U.L. REV. 301, 372-81 (1960), and sources cited at note 8 therein.

[141] Reed, *supra* note 139 at 58.

[142] Interview with officials of the Boeing Company, *supra* note 72.

[143] Aero Mechanic, *supra* note 124.

[144] Brendes & Schwartz, *Schlockmeister's Jubilee: Bankruptcy for the Poor*, 40 REF. J. 69 (1966).

[145] *Id.*

credit to persons who have previously filed bankruptcy, simply because these people are not allowed a second discharge for six years.[146] Most important, however, is the reluctance of some employers to hire persons who have gone through bankruptcy.[147] Thus bankruptcy, even from the debtor's point of view, often does not offer a solution to the predicament posed by the threat of wage garnishment.

Some of the obstacles facing a person burdened with many debts who attempts to rationally solve his debt problem have been outlined above. But the solution of debt problems also has nonrational aspects. If an irrational stimulus or "shock treatment" is necessary to stimulate the payment of just debts by people who are able to pay, then this treatment should be considered, for no credit-based economy can operate successfully unless most people pay their debts. Reasoned discussion of this consideration, however, is not furthered by creditors who use the terms "deadbeat" and "credit criminal."[148] Insofar as those terms connote a person who draws credit with no intention of repaying and who carefully exploits every weakness in the collection laws to frustrate his creditors, the terms refer to an insignificant minority of debtors.[149]

Rather than calculating ways to avoid repaying their debts, most people who pose collection problems drift into debt trouble through lack of planning. Only some of these people in serious debt trouble will be influenced by the "shock value" of an imminent garnishment. For this reason a consideration of possible reforms of wage garnishment should attempt to sketch profiles of some of the most recurrent types of debtors.

One type of debtor who frequently poses a collection problem has been identified in studies of welfare recipients and low income residents.[150] Perhaps as a result of constant exposure to advertising, these people develop a desire for consumer goods they cannot afford. Lured by promises of easy credit and low down payments, they buy goods with little or no conception of the interest rates or even of the monthly payments.[151] There is some indication that these people will

[146] *Cf. id.* The six year prohibition is contained in 11 U.S.C. § 35(c) (1964). This attitude was occasionally mentioned in interviews with creditors, some of whom accused their competitors of catering to bankrupts.

[147] *See* note 143 *supra* and accompanying text.

[148] Jordan & Warren, *A Proposed Uniform Code for Consumer Credit,* 8 B.C. & COM. L. REV. 441, 457 (1967).

[149] *See* Brunn, *supra* note 114 at 1245.

[150] *See generally* D. CAPLOVITZ, THE POOR PAY MORE (1963).

[151] *See, e.g.,* Huber, *supra* note 128 at 1030.

buy so long as the goods are offered, on either legal or illegal terms.[152] There is no indication that garnishment laws change this mode of behavior. Garnishment may cost them their jobs and reinforce their alienation from the law,[153] but it will not stop them from buying.

A different type of credit problem arises when a change in circumstances upsets the calculations of a debtor. A typical problem in Seattle concerns people who come to Seattle during a Boeing Company expansion program. These people may find themselves working for wages above those to which they are accustomed, particularly if they initially receive a substantial amount of overtime pay. Encouraged by this salary increment, they may buy many consumer goods on credit, only to discover that the cost of living in Seattle is higher than they expected and that Boeing, its particular expansion program completed, no longer has overtime work available.[154] Similar problems confront newly married couples attempting to learn the fundamentals of managing their income while making the large initial purchases of furniture and appliances.

Once such people have undertaken more obligations than they can afford, they normally react in one of two ways. Many, realizing they have overextended themselves, attempt to slowly work their way out of debt by cutting down on credit purchases while making smaller payments to their creditors. A garnishment at this point, by an overanxious creditor, may "kill the goose" by driving the debtor into bankruptcy.

The alternative reaction to a debt problem is to ignore it completely.[155] The debtor may ignore collection letters, phone calls, and

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[152] CAPLOVITZ *supra* note 150 at 191 warns against imposing too stringent controls on ghetto merchants because they may be forced to eliminate "easy credit" plans; ghetto residents would then take their business to peddlers, who are even more difficult to control.

[153] A most unfortunate side effect of the garnishment system is that the courts often become the "enemy" in the eyes of the poor. They become further convinced that the society which they come to know as the "system" only works against them and grinds them down.

Hearings at 813 (statement of Mr. Pat Greathouse, Vice President, United Automobile, Aerospace & Agricultural Implement Workers, AFL-CIO).

[154] Interview with Mrs. Pat Greiner, Personnel Dept., the Boeing Company, July 14, 1967.

[155] This appears to be a common psychological reaction which we won't attempt to explain. One psychiatrist has analyzed the reactions of the compulsive borrower in terms of "The Creditor Game" and the "Try and Collect Game." E. BERNE, GAMES PEOPLE PLAY (1966). *See also* Neifeld, *The Credit Drunk*, 20 PERS. FIN. L.Q. REP. 56, 57 (1966). While these terms may be descriptive of the behavior patterns of some debtors, they do not provide an adequate explanation of the reasons these patterns exist.

Some of the "apathy" among low income debtors may be caused by their ignorance of where to get help, by the difficulty of getting help once they know where to go, or

all other attempts of a creditor to contact him. For these people wage garnishment may be "an unfortunate form of reality therapy."[156] It has not been shown, however, that this "therapeutic" value would be lessened by eliminating those aspects of garnishment which impose needless burdens on society.

Only a small percentage of American debtors pose serious collection problems. The majority of these will probably attempt to pay their past due debts irrespective of the garnishment laws. Others, particularly ghetto residents, pose more basic problems which garnishment only aggravates. Still others are too hopelessly in debt for garnishment to make a difference. It is only the remainder with whom we are concerned—those who are influenced to pay their debts solely by the threat of wage garnishment, or those for whom the actual garnishment serves as "reality therapy." For these people a collection device with a shock value or coercive effect may be required. But the goal of reform in this area of the law should also be to reduce the costs to employers, the misery and frustration of the debtor who cannot hold a steady job, the costs to creditors resulting from bankruptcy which are passed on by creditors to the consumer, the increased costs to welfare and unemployment compensation programs, and the additional administrative costs resulting from massive increases in the caseloads of our bankruptcy and municipal courts, all or which result from our present wage garnishment provisions.

V. The Effect of Wage Garnishment Upon Availability of Credit

In most discussions considering legislative revision of garnishment laws considerable attention has been given to the possible effects that a restriction of wage garnishment would have upon the amount of credit granted in the economy. These discussions, although important, have proved inconclusive. Three different arguments have been made concerning the relationship between wage garnishment and the availability of credit:

1) Creditors argue that restrictions on wage garnishment as a remedy will have the immediate effect of raising the number of uncol-

by the feeling that they have been cheated by a merchant, and that the only way to retaliate is to obstinantly do nothing. Caplovitz, *supra* note 150 at 171-72.

[156] We are indebted to Mrs. Pat Greiner, of the Boeing Personnel Dept., for this very descriptive term. Interview, *supra* note 154. These behavior patterns were also mentioned by creditors and collectors during interviews, but usually creditors merely dismissed the debtors exhibiting them as "deadbeats."

lectible debts, thus forcing creditors to restrict the granting of credit by eliminating marginal risks. This in turn would affect the economy adversely by reducing the number of sales.[157] In support of this argument creditors often point to Texas, contending that interest rates have increased and the extension of credit has decreased as a result of that state's abolition of wage garnishment.[158] As yet, these allegations have not been documented. On the other hand New York, which recently raised its wage exemption to exempt 90 percent of a worker's wages from garnishment,[159] is not reported to be undergoing any serious disorientation in its credit system.

2) Some commentators take the opposite point of view, urging that the restriction of wage garnishment has no effect on the granting of credit. The calculations offered in support of this proposition, however, are not sufficient to prove its validity.[160]

3) Others argue that a restriction of creditor remedies is one way to eliminate abuses in the credit system. These commentators believe

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[157] *See, e.g., Proceedings* 15 (testimony of Mr. Robert Kopriva, Associated Credit Bureaus of California):

> I feel that if we make more exemptions in our laws, what would actually happen is that the people that are entitled to credit would be unable to get it because the credit grantor, who has to be concerned about his receivables, if he is unable to effectively make his collections, is not going to be able to grant credit.

[158] Letter, *supra* note 137:

> Texas does prohibit garnishments, in effect, and that provision has greatly reduced the recovery rate on past due accounts. It means that creditors must suffer bigger losses, must deny credit to a larger percentage of tthe population, or must have a higher markup for all those who pay their bills.

The Texas prohibition of garnishment is contained in TEXAS CONST. art. 16, § 28.

[159] N.Y. CIV. PRAC. LAWS & RULES §§ 5231(e), 6202 (McKinney Supp. 1967).

[160] The view that extension of consumer credit is unrelated to garnishment laws was advanced by George Brunn, *supra* note 114 at 1240-42.

In support of this position Mr. Brunn set out a table (*id.* at 1240-41 n.146) purporting to show the ratio of the amount of installment credit to the amount of retail sales in 1963 for seven states with varying garnishment laws. The resulting ratios vary from 24.4 to 25.5, with no correlation to the type of garnishment law. Unfortunately, the dollar amount of each state's installment credit was estimated by dividing the nation's total installment credit by each state's percentage share of the nation's total retail sales. (The installment credit figures were taken from *Proceedings*, App. A at 2 (letter from Robert C. Kopriva, Legislative Chairman, Associated Credit Bureaus of California)). When estimates of installment credit derived in this manner are used to arrive at the ratio by state of installment credit to retail sales, the result, mathematically, should be a constant, i.e., the ratio of the nation's total installment credit to the nation's total retail sales. The only reason for any variation in the ratios calculated by Mr. Brunn must be that he and Mr. Kopriva used different sources for the retail sales figures.

Mr. Brunn uses the same installment credit figures to arrive at state ratios of installment credit to personal income. (*Id.* at 1241 n.149) The way in which the installment credit figures were derived, however, casts doubt upon the usefulness of this exercise, particularly if it is assumed that a state's garnishment laws could affect its ratio of installment credit to retail sales.

The comparisons which Mr. Brunn makes between retail sales and personal income, and per capita personal income by state with state garnishment laws appear to

that a restriction of garnishment will affect the granting of credit only by eliminating credit overextension.[161]

If the extension of credit to persons who will almost certainly be unable to pay[162] can be discouraged by restricting collection remedies, the law will achieve a desirable goal without an adverse economic impact on creditors as a whole. A creditor is just as unable to collect if the debt is discharged in bankruptcy as he would be if his collection remedy were cut off. However, creditors evidently do have a problem collecting from some people who could at least partially repay their obligations, but who choose, instead, to ignore their debts. If credit is denied these people because garnishment is unduly restricted, an unnecessary brake may be put upon the economy as well as an unwarranted hardship upon the members of this group who would be unable to obtain credit. The ideal legislative solution would be to tailor collection law so as to force the debtor to repay what he can afford while leaving him the funds and the opportunity to continue functioning as a productive member of the economy.

VI. Judicial Limitations on Wage Garnishment

A. Review of the Main Action

Under Washington's present garnishment laws the "full power of the state is available to the creditor"[163] who alleges a debt is "just,

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be accurate. However, considering the many factors which could affect personal income, these comparisons probably do no more than disprove the more extravagant claims by creditors that a restriction of garnishment will have dire effects on the economy.

This analysis would be a useless exercise if Mr. Brunn's ground-breaking article had not been receiving considerable attention throughout the country—attention it rightfully deserves. However, the temptation to consider the relationship between garnishment laws and the granting of credit a closed question (*see, e.g.*, 1967 Wis. L. Rev. 759, 763) should be avoided.

[161] *See, e.g.*, Jordan & Warren, *A Proposed Uniform Code for Consumer Credit*, 8 B.C. Ind. & Com. L. Rev. 441, 448 (1967); Murphy, *Proposed Consumer Credit Legislation*, 48 Chi. B. Rec. 157, 165 (1967). *But see* Curran, *Legislative Controls as a Response to Consumer-Credit Problems*, 8 B.C. Ind. & Com. L. Rev. 409, 431 (1967): "Care must be taken, however, not to characterize the problem as one arising out of harsh creditor remedies when it essentially stems from abuses occurring in the process of bargain and exchange."

[162] A flagrant example of overextension of credit can be found in Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965), where a merchant sold a $514 stereo set to a woman with seven children whose only income was her $218 stipend from the government, and who already owed the merchant in question $164.

[163] Jordan & Warren, *supra* note 148, at 457:

> The full power of the state is available to the creditor to enable him to collect his debt once he has obtained a judgment. The ability to use the courts as collection agencies no doubt has encouraged some creditors to induce debtors to incur more debt than they can actually manage.

due and unpaid." The fact that courts have become unwilling adjuncts to creditors in the collection process is not unique to Washington. Courts of limited jurisdiction throughout the country are being swamped with collection cases.[164] While judges resent creditors using their courts as collection agencies,[165] they cannot individually alleviate problems arising from the structure of the law rather than from its application.

The majority of judgments in justice courts are obtained on default of the defendant-debtor.[166] The judge, faced with a standard form complaint which provides little information other than the amount of the claim, can make no real determination of the merits of the case. He can exercise discretion only when assessing the amount of costs to be added to the original obligation. Although the costs awarded may be less than those the creditor requested, these costs may still be substantial. Assessments for attorney's fees, interest, and service accounted for thirteen percent of the total amount of the final judgments in the justice court survey.[167] These fees are a major source of income to collection agencies.

In the justice court cases surveyed, the average amount allowed for attorney's fees was $15.42. The most common allowance was $5.00 for "reasonable attorney's fees," but in many of the bad check cases and suits on notes to finance companies, attorney's fees of $25.00 or more were allowed.[168] As collection agencies usually complete standard form complaints and writs of garnishment, which are then signed by a retained attorney and filed in groups of ten or more,[169] these attorney's fees may not represent money actually paid to counsel.[170]

The average amount allowed for service of the complaint and notice

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[164] *See* note 6 *supra;* Note, *Small Claims Courts as Collection Agencies,* 4 STAN. L. REV. 237 (1952); Kronheim, *Does the Small Claims Branch of Our Municipal Court Measure Up to the Standards of the Community?,* 18 J.B. ASS'N D.C. 113 (1951).

[165] All of the justice court judges interviewed are dissatisfied with the present state of affairs, even though some of them are sympathetic to the problems of creditors. Interview, note 54, *supra. See also,* Kronheim, *A Judge Takes A Critical Look at the District of Columbia Garnishment Law,* 12 PERS. FIN. L.Q. REP. 41 (1958).

[166] *See* Appendix, Table 3.

[167] *See* Appendix, Tables 3 and 7. In addition, a defendant is usually assessed $5.50 for filing and library fees.

[168] *See* Appendix, Table 7. For a discussion of attorney's fees on bad checks, see note 178 *infra* and accompanying text.

[169] The docket books in the office of the clerk, Seattle District Justice Court, contain numerous groups of from ten to twenty consecutive cases brought by the same plaintiff.

[170] Judge Lewis, Seattle District Justice Court, points out that costs awarded by the court can be a significant source of income to collectors who handle cases on a volume basis. Interview, note 54 *supra. But see* 1967 WIS. L. REV. 759, 767, where it is assumed that court awarded costs represent actual expenses incurred by collectors.

of suit was $5.11.[171] Theoretically, these charges represent actual expenses incurred by a collector who must pay a process server. Many large collectors, however, serve their own process.[172] The service fee charged supposedly varies with the mileage travelled to the debtor's home;[173] however, there are indications that this requirement is not strictly followed.[174] Creditors often serve the writ of garnishment on the employer at least three or four days before serving the complaint on the debtor.[175] Since many debtors come to the creditor's office immediately after their wages are garnished, the debtor is served in these cases at slight expense.[176]

Nevertheless, when considering costs that are awarded, it must be remembered that Seattle district justice courts evidently do not allow separate assessments for collection charges or their equivalent. For this reason, service and attorney's fees may be necessary sources of income to offset other items of the collector's overhead.[177] However, the fees allowed in many bad check cases, which may double or even triple the amount of the check, seem completely unjustified. The Washington legislature has made this field so lucrative that there are many new collection agencies which deal entirely in bad checks and rely solely for their income upon these extravagant statutory collection costs, attorney's fees, and interest.[178]

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[171] *See* Appendix, Table 7.

[172] In the Collector Survey, collectors were asked if they served their own process; of those sampled 8% said "yes," 52% said "no," and 40% refused to answer. The latter figure was the highest nonresponse rate for any question on the questionnaire. The justice court judges, and attorneys at the Seattle Legal Services Center and the Washington State Attorney General's office all agreed that some of the larger collection agencies in Seattle do, in fact, serve their own process.

[173] WASH. REV. CODE § 4.84.090 (1956), requires that the fees allowed for service by a private party be "the same as is now allowed... as fee and mileage to an officer." WASH. REV. CODE § 36.18.040 (1963), governs service fees allowed for service by a sheriff, and allows a basic fee of two dollars plus ten cents a mile.

[174] During compilation of the Justice Court Survey, it was noted that one collection agency was allowed $6.00 for service in the majority of cases it brought.

[175] *See* note 97 *supra*.

[176] Judge Patterson in the foreword to this project states that creditors serve the writ of garnishment first so that the debtor will come to them, saving them the trouble of having to find him. *See* p. 736. It is not known whether or not the debtor is then served in the creditor's office and charged a service fee based on the mileage to his home. However, demands for service fees not based on mileage were recorded in very few cases in the Justice Court Survey.

[177] It should also be noted that creditors lose filing fees and service expenses when an action is initiated and the debtor cannot be found. Of the cases in the Justice Court Survey, 17% were dismissed for lack of service, and it is likely that creditors suffered losses in the majority of them.

[178] Ch. 23, § 1, [1967] Wash. Sess. Laws Ex. Sess. 1954, allows interest at the rate of 12% per annum, a collection charge equal to the amount of the check but not to exceed $20.00, plus reasonable attorney's fees. The collection charge is evidently included under the heading of attorney's fees on the justice court dockets, thus resulting in a

Thus it is apparent that courts exercise little control over the operation of wage garnishment as it now exists. The judiciary might be able to use the tort of wrongful garnishment to limit the use of garnishment. Or it might be argued that the constitutional requirements of due process and equal protection invalidate the present use of wage garnishment prior to judgment.

B. Wrongful Garnishment

Liability for wrongful garnishment may be predicated upon the common law tort of malicious prosecution or abuse of process,[179] or upon statutory actions against garnishment or attachment bonds. Although wrongful garnishment may seem to be a viable sanction for defendant-debtors against abuse from collectors, in practice it is an uncertain remedy.

The Washington cases imposing liability appear to be based upon statutes requiring creditors to post garnishment and attachment bonds. There is no statute providing an action for wrongful garnishment; however, the section that requires *garnishment bonds* conditions their return upon plaintiff's payment of damages "that may be adjudged against him for wrongfully suing out such garnishment."[180] This statute makes no mention of probable or reasonable cause for the suit. The Washington statute providing for actions on *attachment bonds* requires that the plaintiff show "that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true. . . ."[181] The Washington Court recognized this variation in statutory language,[182] and in actions for wrongful attachment has required a showing of both lack of probable cause and wrongful suing out of the writ,[183] while in actions for wrongful garnishment liability has been predicated solely upon proof that the writ was wrongfully sued out.[184]

$25.00 attorney's fee in most bad check cases. The above act supersedes WASH. REV. CODE § 62.01.300 (1965) which allowed 6% interest and "reasonable" collection and attorney's fees in bad check cases.

[179] Comment, *Creditor's Liability in Texas for Wrongful Attachment, Garnishment, or Execution*, 41 TEXAS L. REV. 692, 693 (1963).

[180] WASH. REV. CODE § 7.32.020 (1956).

[181] WASH. REV. CODE § 7.12.080 (1957).

[182] The two causes of action are discussed in Olsen v. National Grocery Co., 15 Wn. 2d 164, 130 P.2d 78 (1942).

[183] Brown v. People's Nat'l Bank, 39 Wn. 2d 776, 238 P.2d 1191 (1951).

[184] Olsen v. National Grocery Co., 15 Wn. 2d 164, 130 P.2d 78 (1942); Knight v. Bishop, 51 Wn. 2d 353, 318 P.2d 323 (1957); Maib v. Maryland Casualty Co., 17 Wn. 2d 47, 135 P.2d 71 (1943).

In the rare situation in which a creditor first executes an attachment bond and

The Washington court has had few occasions to discuss the meaning of "wrongful" in a garnishment action. It is clear that a judgment for the defendant in the main action on the debt is conclusive evidence of wrongful garnishment,[185] but it is not clear what test will be applied if the underlying action is not prosecuted to final judgment.[186] A suggested test has been whether a reasonable and prudent businessman would believe the debt was just, due and unpaid.[187] However, a similar test is also used to determine whether there was probable cause,[188] and use of the same test to determine what is "wrongful" would nullify the statutory provision that eliminates a requirement of probable cause from wrongful garnishment actions. Nonetheless, it is difficult to formulate a less stringent test which could be practically applied.

Actions in justice courts present a particularly difficult aspect of wrongful garnishment. It should be recalled that most wage garnishments involve small claims brought in justice court.[189] The statutory requirement of a garnishment bond does not apply in actions in justice courts for amounts under $300.[190] Therefore, in most cases there is no statutory basis for a wrongful garnishment action. Further, the common law action for malicious prosecution requires a showing that the suit was brought with malice and without probable cause,[191] although some courts have dispensed with these requirements in allowing common law actions for wrongful garnishment.[192] The common law

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then resorts to garnishment, lack of probable cause will probably be required to maintain an action for wrongful garnishment, because in most instances the suit will be upon the attachment bond. The court has held that once an attachment bond is executed, an additional garnishment bond is not necessary to procure a writ of garnishment. Paltro v. Aetna Casualty & Surety Co., 119 Wash. 101, 204 P. 1044 (1922).

[185] Olsen v. National Grocery Co., 15 Wn. 2d 164, 130 P.2d 78 (1942); McGill v. W. P. Fuller & Co., 45 Wash. 615, 88 P. 1038 (1907).

[186] It is obviously more difficult for the defendant to bring a successful wrongful garnishment action if the action on the underlying debt has not gone to judgment. For this reason, if plaintiff feels he is going to lose in the underlying action, a good tactic would be to move to dismiss. However, if the motion to dismiss comes after the plaintiff has rested his case, defendant might be able to avoid dismissal without prejudice or to condition the dismissal in some way so that it will serve as evidence of a wrongful garnishment. *See* WASH. CIV. R. SUPER. CT. 41. Another tactic to counter a motion to dismiss would be to counterclaim for wrongful garnishment in the original pleadings.

[187] Comment, *Creditor's Liability in Texas for Wrongful Attachment, Garnishment, or Execution,* 41 TEXAS L. REV. 692, 697 (1963).

[188] *Id.*

[189] *See* Appendix, Table 1.

[190] WASH. REV. CODE § 12.32.015 (Supp. 1967).

[191] *See, e.g.,* Vesper v. Crane Co., 165 Cal. 36, 130 P. 876, 878 (1913); Malone v. Belcher, 216 Mass. 209, 103 N.E. 637 (1913); W. PROSSER, TORTS 874-75 (3d ed. 1964).

[192] *See, e.g.,* Peterson v. Wiesener, 62 Nev. 184, 146 P.2d 789, 793 (1944); Lukens v. First Nat'l Bank, 151 Kan. 937, 101 P.2d 914, 918 (1940).

action for abuse of process does not require a showing of lack of probable cause; but some "wilful act in the use of the process not proper in the regular conduct of the proceeding" is required.[193] Again, some courts have dispensed with this requirement in allowing common law wrongful garnishment actions under the heading, "abuse of process."[194] In short, by whatever name it is called, there is substantial authority allowing a common law action for wrongful garnishment predicated solely upon a "wrongful" bringing of the action.[195] It would seem that the Washington court, rather than perpetuating a meaningless distinction between claims under $300 and those over that amount, should adopt this common law basis of liability for wrongful garnishment in the justice courts.

While the action for wrongful garnishment appears in theory to be a viable check on abuse of the garnishment process, it shares the common shortcoming of much of the legislation and many of the common law rules available for the protection of the consumer—it depends upon individual initiation of legal action. The principal defendants, particularly in the justice courts, commonly do not have the time, money, knowledge, or inclination to hire an attorney and pursue what is, at least at the justice court level, an uncertain remedy. In addition, even if the wrongful garnishment action were completely effective in eliminating the abuse it was designed to prevent, *i.e.*, garnishment pursuant to an invalid claim, the remedy cannot be expected to curb the other social costs of wage garnishment, *i.e.*, the coercive effect of having wages withheld, job losses, and the rising incidence of bankruptcy.

C. Due Process

Recent criticisms of Washington's garnishment statute raise the question whether prejudgment garnishment violates the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.[196]

Essentially, procedural due process requires that deprivation of property be preceded by notice and an opportunity to be heard.[197]

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[193] PROSSER, *supra* note 191, at 877.

[194] *Id.*

[195] See cases cited note 192 *supra.*

[196] *Minutes* at 3 (testimony of Mr. Charles Ehlert, Assistant Director of the Seattle Legal Services Center, and Judge Mark T. Patterson, Everett District Justice Court).

[197] *See, e.g.,* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313

If under Washington practice prejudgment garnishment is a deprivation of property, there clearly is neither adequate notice nor opportunity to be heard prior to the garnishment.[198] However, if it is not a deprivation of property there is probably sufficient notice[199] and opportunity to be heard[200] prior to the actual "deprivation" which presumably will take place at judgment.[201]

Perhaps due to the time-honored position that garnishment holds in our legal traditions,[202] few courts have considered the "deprivation" question. Those which have reached the issue conclude that garnishment prior to judgment is not a deprivation of property in the constitutional sense, primarily because the deprivation is "temporary" and "conditional," depending for finality upon reduction of the underlying claim to judgment.[203] The United States Supreme Court has not considered the issue.[204] Considering the expansive definitions promulgated by some courts of what constitutes property and the deprivation there-

(1950); Senior Citizens' League, Inc. v. Department of Social Security, 38 Wn. 2d 142, 168, 228 P.2d 478, 492 (1951).

[198] The writ of garnishment is usually served upon the employer before the notice of suit is served on the debtor. *See* note 97 *supra.*

[199] WASH. REV. CODE § 12.04.040 (1925), requires service of the complaint and notice of suit at least five days before the date set for the defendant to appear. This would appear to guarantee adequate notice of the underlying action. New York has experienced some incidence of fraudulent or "sewer" service, particularly in cases involving installment sales. *Installment Sales: Plight of the Low-Income Buyer,* 2 COLUM. J.L. & SOC. PROB. 1 (1966). Although the files of the Seattle District Justice Court reveal a high number of defaults and a number of affidavits of service reciting service only at the "abode" of the principal defendant—both of which might be warning signs of fraudulent service—the judges are of the opinion that collectors will sometimes omit the address only in an attempt to keep this information from other creditors of the defendant. Interview with Judges Starr, Hoar, and Lewis, Seattle District Justice Court, Aug. 18, 1967.

[200] However, if the defendant is precluded from asserting a defense at trial for financial reasons, due process questions may arise. *See* discussion in text accompanying note 215 *infra.*

[201] The cases dealing with whether garnishment is sufficient notice of the underlying action are not directly relevant. *See, e.g.,* Albright-Prior Co. v. Pacific Selling Co., 126 Ga. 498, 55 S.E. 251 (1906); Spoturno v. Woods, 38 Del. 378, 192 A. 689 (1937). However, these cases may be apposite insofar as they contain an underlying assumption that no notice is required for the garnishment itself, because implicit in that assumption is the proposition that garnishment is not a deprivation of property requiring notice.

[202] "[Garnishment proceedings] are truly blue-blooded legal institutions that can claim a family tree reaching back into the Middle Ages." Mussman & Riesenfeld, *Garnishment and Bankruptcy,* 27 MINN. L. REV. 1, 8 (1942).

The court in McInnes v. McKay, 127 Me. 110, 141 A. 699 (1928), *aff'd,* 279 U.S. 820 (1928), relied heavily on this pedigree when deciding that garnishment is not a deprivation such as contemplated by the Constitution.

[203] McInnes v. McKay, 127 Me. 110, 141 A. 699 (1928), *aff'd* 279 U.S. 820 (1928); Byrd v. Rector, 112 W. Va. 192, 163 S.E. 845 (1932).

[204] In Endicott Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285 (1924), the Court held that a prior judgment constitutes sufficient notice and hearing for a garnishment in execution of that judgment. Implicit in the decision is a holding that garnishment in execution of a judgment is a deprivation of property that re-

of,[205] and the fact that there is no overriding social interest (interests similar to those which support restrictions of property interests in police power cases) in granting creditors this "extraordinary" remedy, the due process argument is at least worthy of attention. However, in view of the courts' past treatment of the issue, due process as a judicial limitation on the remedy of prejudgment garnishment is speculative at best.

D. Equal Protection

While Washington's garnishment provisions permit seizure of the wages of all defendants prior to judgment regardless of financial status, the operation of these provisions essentially denies the poor any opportunity to present defenses to main court actions. Recalling previous discussion, up to two weeks' wages are normally caught by a prejudgment garnishment. If the defendant chooses to assert a defense at trial, these wages will not be released until after the trial, which may occur two to three months after the writ of garnishment is served.[206] On the other hand, if the debtor makes satisfactory arrangements with the creditor, his wages will be returned immediately.[207] It would seem that prejudgment garnishment in Washington requires the equivalent of filing a one hundred dollar bond before the right to

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quires notice and a hearing. However, unlike a garnishment in execution, the permanency of a garnishment before judgment is dependent upon a subsequent judgment.

In Harris v. Balk, 198 U.S. 215 (1905), the Court approved the garnishment of a debt owed to the principal debtor even though the principal debt had not been reduced to judgment. However, in *Harris,* as well as in cases upholding the attachment of tangible property as a basis for in rem or quasi in rem jurisdiction, the principal debtor was outside the jurisdiction, and the attachment or garnishment was used primarily as a means of subjecting the principal debtor or at least his property to the jurisdiction of the court. In a prejudgment wage garnishment, however, the principal defendant is rarely outside the jurisdiction, and the garnishment is not a symbolic seizure subjecting the property to the jurisdiction of the court. Rather, the garnishment is a very real seizure of what is often the principal defendant's only means of livelihood, and its effect is most often not to coerce him into the jurisdiction, but to force him out of the courts and into the creditor's office for a non-judicial determination of the claim.

[205] *See, e.g.,* McInnes v. McKay, 127 Me. 110, 141 A. 699 at 702:

> The legal right to use and derive a profit from land or other things is property.... And the power of disposition at the will of the owner is property. Deprivation does not require actual physical taking of the property or the thing itself. It takes place when the free use and enjoyment of the thing or the power to dispose of it at will is affected.
>
> But although attachment may within the broad meaning of the preceding definition, deprive one of property, yet conditional and temporary as it is,... we do not think it is the deprivation of property contemplated by the Constitution.

[206] *See* note 113 *supra* and accompanying text.

[207] *See* note 115 *supra* and accompanying text.

assert a defense at trial can be exercised.[208] This requirement effectively forecloses access to the courts for many debtors who cannot afford a delayed paycheck.

In criminal cases the Supreme Court has struck down fee limitations on the right of appeal,[209] on the ability to procure transcripts for appeal,[210] or on the filing of a petition for a writ of habeas corpus.[211] In *Griffin v. Illinois* the Court stated:

> Surely no one would contend that either a state or the Federal Government could constitutionally provide that defendants unable to pay court costs in advance should be denied the right to plead not guilty or to defend themselves in court.... Notice, the right to be heard, and the right to counsel would under such circumstances be meaningless promises to the poor.[212]

The Court has not yet faced these issues in a civil case.[213]

The conditioning of access to the courts upon payment of money may run afoul of two constitutional prohibitions. First, insofar as the requirement results in unequal treatment of classes of defendants based upon their ability to pay, the procedure may violate the equal protection clause.[214] Second, it is possible that the opportunity to be

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[208] In cases where employers answered that wages were due, the average amount due was $151.26. *See* note 36 *supra*. Even if the employee did claim his wage exemption in all cases, it is unlikely that many would be eligible for the full $100 ($50 per week) exemption—either because a full two weeks wages were not caught, or because the employee does not have three dependents. *See* WASH. REV. CODE § 7.32.280 (Supp. 1967), quoted *supra* note 30. Therefore, it is reasonable to assume that the average garnishment which catches anything will catch $75 to $100 of nonexempt wages. The amount sought in the main action will usually exceed this amount (*see* Appendix, Table 1), so that a debtor who chooses to bring an action to trial will usually have to do without $75 to $100 of his wages for a period of two or three months.

[209] Burns v. Ohio, 360 U.S. 252 (1959).

[210] Griffin v. Illinois, 351 U.S. 12 (1956).

[211] Smith v. Bennett, 365 U.S. 708 (1961).

[212] 351 U.S. at 17.

[213] In Hovey v. Elliott, 167 U.S. 409 (1897), it was held that the courts of the District of Columbia could not, under the due process clause, suppress the answer of a defendant (ordered to show cause why he should not be held in civil contempt) and enter a decree in default against him because he failed to post a $49,000 bond.

[214] U.S. CONST. amend. XIV. The full implications of *Griffin* are still not clear. "When nine men split four ways and no opinion has the complete support of any five, I humbly submit that the implications are a matter for a Delphic oracle...." Qua, *Griffin v. Illinois*, 25 U. CHI. L. REV. 143, 147 (1957).

Some members of the Court refuse to accept the proposition that a state may violate the equal protection clause by adopting a law of general applicability which in actuality affects the poor more harshly than it does the rich. *See* Justice Harlan dissenting in Douglas v. California, 372 U.S. 353, 360, 361-62 (1963). Even members of the majority in *Griffin* evidently do not agree on its impact in civil cases. *See* Justice Douglas' dissent from denial of certiorari in Williams v. Shaffer, 385 U.S. 1037 (1967), *noted in* 20 STAN. L. REV. 766 (1968).

heard guaranteed by the due process clause,[215] as with other constitutional rights,[216] may not be conditioned upon affluence. These issues were raised in a recent case arising under the Georgia summary eviction statute.[217] The Georgia statutes require that in order to remain in possession of the property and to obtain a trial the tenant must post a bond to secure costs. After the Georgia court declared the controversy moot,[218] the tenant petitioned the Supreme Court for a writ of certiorari. The Court denied the petition.[219] Justice Douglas in a dissenting opinion stated that "the Equal Protection Clause . . . is not limited to criminal prosecutions."[220] He argued the applicability of analogous criminal cases.

The potential impact of *Griffin* and its progeny if applied to civil cases is enormous.[221] All requirements of licensing fees and bonds could conceivably run afoul of the equal protection clause. Perhaps for this reason the Court has been reluctant to expand equal protection requirements in civil actions. Judicial limitation of prejudgment garnishment under the equal protection clause, then, is just as unlikely as under procedural due process. Rather than reliance upon the possibility of what are perhaps unwise expansions of constitutional doctrines, a more certain and desirable method of eliminating the evils of prejudgment garnishment would be statutory reform.

VII. RECOMMENDATIONS

Wage garnishments impose heavy burdens on employers, debtors, and society as a whole in the form of expenses to employers, high bankruptcy rates, and the reinforcement of unemployment and des-

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[215] U.S. CONST. amend. XIV.

[216] *See* Petitioner's Brief for Certiorari at 12, Williams v. Shaffer, 385 U.S. 1037 (1967):

> [J]ust as the exercise of such basic rights as free speech, [Murdock v. Pennsylvania, 319 U.S. 105 (1943)] the right to travel from one state to another, [Edwards v. California, 314 U.S. 160 (1941)] the right to vote [Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966)] or the right to counsel [Gideon v. Wainwright, 372 U.S. 335 (1963)] cannot be conditioned on affluence, neither may the right to defend in a civil action....

[217] Williams v. Shaffer, 385 U.S. 1037 (1967). Citations to the relevant Georgia statutes are contained in Justice Douglas' dissenting opinion.

[218] Williams v. Shaffer, 222 Ga. 334, 149 S.E.2d 668 (1966), *cert. denied*, 385 U.S. 1037 (1967). The tenant asked for a declaratory judgment and that the landlord be enjoined from evicting him. As the tenant had already been evicted the Georgia court declared the controversy moot.

[219] 385 U.S. 1037 (1967).

[220] 385 U.S. at 1039.

[221] Some of the commentary on the potential impact of *Griffin* is listed in Comment, *Equal Protection and the Indigent Defendant: Griffin and its Progeny*, 16 STAN. L. REV. 394, 396 (1964).

pair. These burdens outweigh the concurrent benefits provided creditors by the availability of the remedy. This imbalance has led many observers to recommend the abolition of wage garnishment,[222] and some states have followed this advice.[223]

Wage garnishments directly affect only a small number of consumers. The delinquency rate on installment credit has been estimated to be between one and two percent.[224] Legal actions are probably filed in less than 10 per cent of these delinquent accounts.[225] To deal with this small group of bad debts, ". . . creditors have gained a vast arsenal of remedies."[226] Credit information on millions of Americans is now being stored in computers, and soon information on every person who has ever purchased an item on credit will be instantly available to any potential lender.[227] A man's credit rating will mean much more than it ever has in the past. Collectors have available increasingly sophisticated prelitigation collection devices, in addition to an impressive array of legal devices such as chattel mortgages, wage assignments, and attachments and execution levies against numerous forms of property.[228]

In Washington, however, the number of alternative remedies available to creditors is not so large. Homesteads are generally exempt from attachment or execution,[229] as are numerous items of personal property.[230] Employers are not required to accept wage assignments of under $300.[231] The judgment note, a device used frequently in Pennsylvania where wage garnishments were abolished in 1845,[232] is not available in Washington.[233] Aside from wage garnishment there is no

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[222] *See, e.g.*, Kronheim, *supra* note 152; Satter, *An Argument for Abolition of Wage Attachment*, 52 ILL. B.J. 1026 (1964).

[223] Florida has abolished wage garnishment of resident heads of families. FLA. STAT. § 222.11 (1965). Pennsylvania and Texas do not allow any garnishment of wages. PA. STAT. ANN. tit. 42, § 886 (Supp. 1966); TEXAS CONST. art. 16, § 28.

[224] *Proceedings*, App. A (letter from Robert Kopriva, Associated Credit Bureaus of California).

[225] *See* notes 37-39 *supra* and accompanying text.

[226] Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 IOWA L. REV. 155, 181 (1957).

[227] See Karst, *"The Files": Legal Controls Over the Accuracy and Accessibility of Stored Personal Data*, 31 LAW & CONTEMP. PROB. 342, 371-76 (1966).

[228] *See* Brunn, *supra* note 114 at 1242-43; Comment, *Garnishment of Wages in Pennsylvania: Its History and Rationale*, 70 DICK. L. REV. 199, 211 (1966).

[229] WASH. REV. CODE §§ 6.12.090-.100 (1956).

[230] WASH. REV. CODE § 6.16.020(3) (1965) exempts household goods, appliances and furniture up to $1000 in value; provisions and fuel to comfortably sustain a householder and family for three months; and up to $400 in other property.

[231] WASH. REV. CODE § 49.48.090 (1958).

[232] Felsenfeld, *Some Ruminations About Remedies in Consumer-Credit Transactions*, 8 B.C. IND. & COM. L. REV. 535, 537 (1967).

[233] In Washington, a confession of judgment is surrounded by strict procedural requirements. *See* note 108 *supra*.

practical means of insuring execution of a judgment on a small loan, a small debt incurred for services, or on liabilities resulting from credit card transactions or bad checks.[234] If judgments on this type of credit become impossible to execute, creditors may restrict[235] or eliminate the granting of credit in many of these transactions.

The impact of abolishing wage garnishment upon the granting of credit has not been documented.[236] Creditors, like debtors, often react to wage garnishment in an irrational manner, and any prediction as to how they would react to an abolishment of wage garnishment is provisional at best. Therefore, a complete abolition of wage garnishment may only replace the present social costs with other, though perhaps lower, costs resulting from the real or imagined burdens placed on creditors.

For these reasons, rather than abolishing wage garnishment completely, an attempt should be made to modify the garnishment laws so as to eliminate the high social costs now resulting from wage garnishment without eliminating collection remedies for any significant type of credit now being granted. In Washington, this would require a substantial revision of the garnishment laws.

There are a number of ways this necessary revision could be accomplished. Because many of the policy considerations necessitating a revision of garnishment laws are unique to *wage* garnishment, we recommend an approach to statutory revision similar to that used in Illinois.

In 1961 the Illinois General Assembly adopted a new act relating solely to the garnishment of wages. As a result, Illinois now has two separate garnishment procedures—one applicable only to wages, and one covering garnishment of all other property.[237] Thus, after excluding wage garnishments from RCW § 7.32.010 and § 12.32.010 (Grounds for Issuance of Writ) it is recommended that the following changes be incorporated into one chapter covering the garnishment of wages in both justice and superior courts.

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[234] Interview with Mr. Pat Corbett, Esq., July 7, 1967. Mr. Corbett, when questioned about abolishing garnishment, indicated that he could conceive of no other way of executing judgments in Washington if wage garnishment were abolished.

[235] Increasing interest rates is not really a viable alternative for creditors, because interest rates are extensively regulated in all states. *See generally* B. CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION (1965).

[236] *See* note 160 *supra; Hearings* at 742 (testimony of Willard Wirtz, Sec. of Labor): "You can't find the resultant effect on credit. It is a hard thing to measure. But I am willing to go along with the common sense suggestion that if you tighten up on the use of this kind of practice it must have some effect on credit."

[237] *See Prefatory Note to the Garnishment Act of 1959 and the Wage Deduction Act of 1961 as Amended,* ILL. ANN. STAT. ch. 62 (Supp. 1967).

A. *Abolition of Garnishment Prior to Judgment*

Commentators and judges have been particularly vocal in pointing out the evils of prejudgment garnishment.[238] Even creditors are somewhat disenchanted with the remedy.[239] In review, prejudgment garnishment incorporates two significant evils. First, when used in a jurisdiction with inadequate wage exemptions it coerces the debtor to seek settlement with the creditor rather than be heard in court. The debtor may thus become obligated to pay costs higher than those which would be imposed by a court.[240] Second, this coercive effect may cause debtors to forego valid defenses to the claim which they would otherwise raise at trial.[241] There is no indication that the remedy prevents many debtors from leaving the jurisdiction,[242] and garnishment in execution of a judgment is equally successful in preventing the conversion of wages into exempt property.

The abolition of prejudgment garnishment can be accomplished either by inserting in the exemption statute a 100 percent exemption of wages from prejudgment garnishment, or by incorporating it in a separate section setting forth the grounds for which a wage garnishment may be issued. In order to maintain consistency with Washington's other garnishment provisions, we chose the latter course and recommend the following provision.[243]

> *Grounds for issuance of writ.* The justices of the peace, justice courts, and superior courts may issue writs of garnishment for the garnishment of earnings in the form of wages, salary, commission or bonus as compensation for personal service only where the plaintiff has a judgment wholly or partially unsatisfied in the court in which he seeks to have the writ of garnishment issued.

B. *Wage Exemption*

Washington's wage exemption is inadequate. The national average weekly wage of a production worker at the end of 1967 was $103.25.[244] For an aircraft production worker this figure was $152.85.[245] While

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[238] *See* note 65 *supra.*
[239] *See, e.g.,* text accompanying note 64 *supra.*
[240] *See* note 57 *supra* and accompanying text.
[241] *See* notes 120, 121 *supra* and accompanying text.
[242] *See* notes 52-54 *supra* and accompanying text.
[243] The phrase, "earnings in the form of wages, salary, commission or bonus as compensation for personal service," was suggested by Prof. Countryman for inclusion in the "Truth in Lending" provision limiting garnishment (H.R. 11601, tit. II, § 202). *Hearings* at 727.
[244] MONTHLY LABOR REV., Feb., 1968, at 107 (figures for Dec., 1967).
[245] *Id.* at 111 (figures for Dec., 1967).

it is estimated that the average family spends 85 to 90 percent of its yearly earnings to satisfy current needs,[246] Washington's wage exemption is only $50 per week for a worker with three dependents;[247] a figure now below the FLSA minimum wage.[248] At today's cost of living, Washington's wage exemption no longer guarantees a "living wage" for the garnished debtor.

This low exemption forces a debtor to negotiate with his creditor if he wants to avoid incurring more debts and dropping behind in his payment of others. When negotiating with a creditor the debtor has almost no bargaining power because he has no alternatives. With other debts piling up, a debtor who does not negotiate must either quit work or declare bankruptcy in order to avoid further garnishments.[249]

The present wage exemption appears to be a compromise between providing a living wage for the delinquent debtor and punishing him; but it accomplishes only the latter. The purpose of wage garnishment should be to collect debts rather than to inflict punishment. It can be argued that the only way the law can insure an honest attempt by a debtor to repay his bills is to place him in such a financially difficult position that he will be forced to stop consumption of "frills"; but the more financially uncomfortable a debtor gets, the greater the risk that he will file bankruptcy.[250] There is no need to force a person into poverty to collect a debt; in fact, from a broader point of view such action is incomprehensible.

Before deciding the amount to which Washington's wage exemption should be raised, there are two preliminary points to consider. First, the new wage exemption should be expressed as a percentage. Exemptions expressed in dollar amounts rapidly become outmoded with changes in the value of the dollar, and require constant legislative revision. As a result, at any given time the actual protection provided by a dollar exemption is probably less than the legislature intended when passing the exemption.[251] Second, the wage exemption should auto-

[246] *See* note 86 *supra*.

[247] WASH. REV. CODE § 7.32.280 (Supp. 1967), quoted *supra* note 30.

[248] Fair Labor Standards Act, 29 U.S.C. § 206 (1938), *as amended*, 80 Stat. 838-40 (1966).

[249] *See* notes 130, 132 *supra* and accompanying text.

[250] *See* notes 132-34 *supra* and accompanying text.

[251] *See, e.g.*, Abrahams & Feldman, *The Exemption of Wages From Garnishment: Some Comparisons and Comments*, 3 DE PAUL L. REV. 153, 161 (1954); Joslin, *Debtors' Exemption Laws; Time for Modernization*, 34 IND. L.J. 355, 361 (1959); Rombauer, *Debtors' Exemption Statutes—Revision Ideas*, 36 WASH. L. REV. 484, 497 (1961). It was noted that Kentucky's exemption of $67.50 per month exempted 100%

matically apply. In Washington and other states without automatic exemptions very few debtors actually claim an exemption.[252]

Suggestions as to the amount of wages which should be exempt from garnishment range from $3600 to $15,000 per year.[253] Present state exemption laws are "as individual as snowflakes,"[254] and vary from $30 a month to exemptions of 90 and 100 percent.[255] As noted above, present estimates indicate than an average family uses 85 to 90 percent of its income to satisfy current needs.[256] In view of these estimates we have chosen an 85 percent exemption.[257] This exemption will apply automatically, regardless of the debtor's yearly or monthly income, and regardless of whether or not he has dependents.

Admittedly, this exemption will seem unfair when applied at both ends of the income spectrum. A person with a large family earning $3600 per year probably needs more than 85 percent of his income, while a person earning over $15,000 a year probably needs less. However, the person earning over $15,000 a year is more likely to have nonexempt property which can be levied upon, while the low income person is more likely to incur the small debts for which wage garnishment is the only means of execution. Placing a "floor" or "ceiling" upon the exemption would only defeat our purpose of avoiding constant legislative revision. The following provision incorporates these recommendations:

> *Exemption of wages and other compensation.* Eighty-five per cent of net earnings in the form of wages, salary, commission or bonus as compensation for personal service are exempt and are not subject to collection under a writ of garnishment. Any employer served with a writ of garnishment as herein provided by this chapter shall pay the employee the amount of his exempt earnings.

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of the income of most employees when the statute was enacted, but by 1956 it exempted less than 25% of the average employee's income. 45 KY L.J. 322, 329 (1956).

[252] *See* note 103 *supra.*

[253] The $3,600 suggested exemption is contained in Karlen, *Exemptions from Execution,* 22 BUS. L. 1167, 1171 (1967). Prof. Countryman rejected this suggestion and proposed an exemption of $15,000 per year. *Hearings* at 728.

[254] Seid, *Necessaries—Common or Otherwise,* 14 HASTINGS L.J. 28, 33 (1962).

[255] A complete list of state wage exemption laws is contained in Brunn, *supra* note 114 at 1250-53.

[256] *See* note 86 *supra.*

[257] The 85% exemption was selected because it appears to be the lowest exemption that would not create extreme hardships for the average employee; however, a bill now before Congress as part of the "Truth in Lending" Act (H.R. 11601, 90th Cong., 1st Sess. tit.II, § 202(a)) essentially exempts 90% of a person's wages from garnishment. If this bill is passed it will, by its terms, preempt all lower state wage exemptions.

As used in this section "net earnings" means the earnings remaining after deductions for federal income tax and social security but before all other deductions.

C. Notice to Debtor

Illinois has abolished prejudgment garnishment and raised its wage exemption to 85 percent, and instituted a writ that continues for a thirty day period.[258] As a result, in one large plant in the Chicago area 10 percent of the 22,000 employees have a portion of their wages withheld every payday to satisfy delinquent debts.[259] While this certainly indicates that debtors are no longer being forced to negotiate at a disadvantage with creditors, and that wage garnishments operating within a proper statutory framework can be an actual collection device rather than a tool of coercion, these figures also point to a potential burden on employers which may result from the statutory reforms recommended thus far. One device which might reduce this potential would be a notice and demand to the debtor prior to garnishment. This could be presented in the form of a bill calling for weekly or biweekly installment payments, thus giving the debtor a realistic chance to pay a judgment on his own initiative—along with a warning that his wages will be garnished if he does not comply. The following statutory provisions could implement this recommendation:[260]

Notice to the judgment debtor. Prior to issuance of the writ of garnishment on an employer, a notice shall be filed with the court from which the judgment issued and served upon the judgment debtor ordering him to pay installments of not more than fifteen percent of his net earnings until the amount of the named judgment unpaid is satisfied. The notice shall also inform the judgment debtor that if the terms of the notice are not complied with within twenty days, a writ of garnishment may be served upon his employer.

Levy upon default of judgment debtor. If a judgment debtor fails to pay installments pursuant to the notice described in R.C.W. (Notice to the judgment debtor) served upon him for a period of twenty days, then upon the filing by a judgment creditor of (a) an affidavit of service of the notice upon the judgment debtor, (b) an affidavit stating that the

[258] ILL. ANN. STAT., ch. 62, §§ 73, 74, 77 (Supp. 1967).

[259] *Hearings* at 768. The quoted figures were printed in 1966; the Illinois statute was amended in 1961.

[260] The recommended provisions are based upon the procedure outlined in N.Y. CIV. PRAC. LAWS & RULES §§ 5231(b),(c),(d) (McKinney 1963). It is also suggested that the form of this notice be prescribed by statute, because some creditors are prone to incorporate extravagant threats into "statutory" notices.

terms of the notice have not been complied with, and (c) an affidavit that the affiant believes any person or entity is indebted to the judgment debtor for wages due or to become due, as herein provided, a writ of garnishment shall issue to be served upon the person named in the affidavit as the employer.

D. Continuing Writ

If the recommended wage exemption of 85 percent is adopted, some provision for a continuing writ that allows garnishment of future wages is necessary.[261] A judgment debtor earning $100 per week may only have $12 to $13 a week of non-exempt wages after deductions. Without a continuing writ, several writs of garnishment would be required to execute even small judgments. Each writ imposes additional expense upon the creditor and the employer, and increases the possibility of the debtor being fired. The average judgment amount in the justice court survey was $215.19, although the modal amount was somewhat lower. In order to ensure collection of a large portion of this amount, a continuation of each writ for a period of 90 days is recommended. The following provisions incorporate the recommended continuing writ, as well as accompanying provisions for priority over previous writs and for answer by the employer.[262]

Effect of writ to create lien. To the extent of the amount due upon the judgment and costs, the employer shall hold, subject to order of court,

[261] *See* Note, *State Wage Exemption Laws and the New Iowa Statute—A Comparative Analysis,* 43 IOWA L. REV. 555, 567 (1958), where it is argued that Iowa's new garnishment statute essentially depends upon the coercive effect of the threat of job loss for its utility, because the writ is effective for only one pay period. Iowa's statute exempts only $35 per week plus $3 for each dependent under 18 years of age. IOWA CODE ANN. § 627.10 (Supp. 1966). *But see* Lee, *An Analysis of Kentucky's New Exemption Law,* 55 KY. L.J. 618, 631 (1967), where it is argued that a continuing writ is not necessary in Kentucky, even though that state has a 75% wage exemption. KY. REV. STAT. ANN. § 427.010(2) (Supp 1967). *See also, Proceedings* 20, 50, 88 (testimony of Mr. Kopriva, Mr. Weissman, and Mr. Conway) where three representatives of creditors all recommended that some limitation on successive writs of garnishment be adopted in California.

[262] The recommended statutory sections are based generally upon ILL. ANN. STAT., ch. 62 § 77 (Supp. 1967); however, the provisions for answer by the employer do not follow the Illinois procedure. Illinois requires the employer to answer interrogatories before the writ issues, and again after the writ runs out. It is felt that the recommended procedure will require somewhat less paperwork of the employer.

The Illinois statute also provided that the writ would run for 30 days. This was changed to 90 days for the reasons stated in the text.

The section on priority of writs is intended to avoid any further requirement that an employer "split" checks. If two or more writs were allowed to be effective against exempt wages, the check would probably have to be "split" by a clerk, rather than prepared on the normal payroll computer run.

The forms for the writ of garnishment and the answer have not been included. It is recommended that forms akin to those set out in WASH. REV. CODE §§ 12.32. 040, 100 (1967) be included in the chapter.

any non-exempt wages due or which subsequently come due. The judgment or balance due thereon is a lien on wages due at the time of service of the writ, and such lien shall continue as to subsequent earnings until the total amount due upon the judgment and costs is paid or until the expiration of the employer's payroll period ending immediately prior to 90 days after service of the writ, whichever first occurs, except that such lien on subsequent earnings shall terminate sooner if the employment relationship is terminated or if the underlying judgment is vacated or modified.

Answer of employer. The employer shall answer on or before a date fifteen days after service of the writ stating whether the judgment debtor is employed by him. If the answer is affirmative, a second answer shall be made on or before fifteen days after the lien on the judgment debtor's non-exempt wages terminates by operation of R.C.W. (Effect of writ to create lien) stating the amount of non-exempt wages held. The answers of the employer shall be in writing and signed and shall be served upon the judgment creditor and filed with the clerk of the court issuing the writ.

Priority of writ. A lien obtained hereunder shall have priority over any subsequent lien obtained hereunder. Any writ served upon an employer subsequent to a previous writ on the same wages covering the same payroll period is void, and shall be returned by the employer with an answer stating when the previous lien will terminate.

E. Limitation on Discharge for Garnishment

The more oppressive long range effects of wage garnishment are related to discharge for garnishment. Studies have shown that some of the hard-core unemployed are unemployable because they have garnishment records.[263] It is fear of job loss, more than anything else, which influences debtors to declare bankruptcy.[264] The same fear also motivates a debtor who quits his job rather than have his employment record blemished.[265]

A state can abolish prejudgment garnishment and raise its exemption, but when the writ is served, the fact that it came after judgment and that 85 percent of his wages are exempt is little consolation to the debtor if he loses his job.[266] Illinois eliminated prejudgment garnishment and raised its wage exemption, but the state's bankruptcy rate still remained high.[267] Wage garnishment's effect upon unemploy-

[263] *See* note 126 *supra.*

[264] *See* note 135 *supra* and accompanying text.

[265] *See* note 46 *supra.*

[266] *See* Murphy, *Proposed Consumer Credit Legislation,* 48 CHI. B. REC. 157, 165-66 (1967): "A second difficulty of exemption statutes, no matter how generous to the employee, is that a deduction order is still a black mark fo the employee. . . ."

[267] Between 1961 (when Illinois raised its wage exemption to 85%) and 1964, personal bankruptcies in Illinois declined 9% while they were increasing 18%

ment and bankruptcy rates can only be cured by abolishing the remedy, or by restricting discharge for garnishment.[268] Wage garnishment should not be completely abolished, but a limitation upon discharge for garnishment is essential to any complete statutory reform.

The most rational reasons supporting employers discharging for garnishment are to avoid bookkeeping and related expenses, and to avoid poor work performance resulting from worry about debts.[269] If the garnishment laws are modified to eliminate prejudgment garnishment and provide advance notice to debtors, the number of garnishments will probably decrease, or at least remain constant. If the necessity for splitting checks is eliminated, bookkeeping costs will be reduced. The work performance of a debtor who does not have to fear losing his job or being unable to meet currrent expenses will probably not deteriorate. If a complete revision of the garnishment laws can thus reduce the expenses to employers caused by garnished employees, the impact of a restriction of the right to discharge will be reduced.

It has been argued that such a law would be unenforceable. This argument can be answered in two ways. First, it can be assumed that most large manufacturers, who receive the bulk of garnishments, will make a good faith effort to obey the law if passed; therefore, providing the discharged debtor a civil cause of action against the employer would probably be sufficient, even though such private enforcement mechanisms are rarely effective. Second, if the legislature is seriously concerned about enforcement, the State Attorney General could be given power to enforce the provision with criminal penalties for its violation. George Brunn, in his work on wage garnishment,[270] argues that the example of the National Labor Relations Act's prohibition of discharge because of union membership[271] shows that such a provision can be enforced.

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nationally: and they declined another 4% between 1964 and 1966 while the national increase was an additional 2%. However, Illinois still ranks eighth in the nation in per capita personal bankruptcies. *Hearings* at 725-26 (testimony of Prof. Vern Countryman).

[269] An alternative solution to the problems of garnishment not heretofore mentioned is exemplified by procedures instituted in a few states whereby a court-appointed trustee administers a debtor's nonexempt wages, allocating them among his creditors; the debtor is usually protected from garnishment which participating in a plan of this nature. There is a good discussion of these plans in Brunn, *supra* note 114 at 1226-27. Mr. Brunn concludes that implementation of such a plan might be viewed as too burdensome by the courts. It would appear to be extremely difficult, if not impossible, to implement such a procedure in Washington without also overhauling the administrative apparatus of the justice and/or superior courts on a state wide basis to prepare for the influx of paperwork that such a procedure would entail.

[270] *See* notes 74, 78 *supra* and accompanying text.

[270] *See Brunn, supra* note 114 at 1232-33.

[271] 61 Stat. 140 (1947), *as amended*, 29 U.S.C. §§ 158(a)(1), 158(a)(3) (1964).

In order to provide sufficient protection against discharge, it is recommended that an employer be prohibited from discharging an employee unless the employee has been garnished at least three times within the previous twelve month period. Any writs of garnishment which do not "catch" any wages because of the priority of previous wages should not be included in the count of writs served within the previous twelve months. This is necessary under present creditor practice because an employee in debt trouble may initially be garnished several times by creditors anxious to catch something before the debtor is fired or goes into bankruptcy. The recommended provisions requiring notice, raising the exemption, and limiting discharge should alleviate this problem of numerous ineffective writs, and as a result of the limitation on discharge, most garnished employees should be secure in their jobs—anyone garnished four times within a year is in such debt trouble that his employer could rightfully require that his employee take remedial action.

The recommended provision is basically the same as New York's statute limiting discharge, except that New York only prohibits discharge for the first garnishment.[272]

Dismissal or lay off of employee to avoid compliance with writ of garnishment.

1. No employer shall discharge or lay off an employee because a writ of garnishment has been served upon such employer against the employee's wages; provided, however, that this provision shall not apply if more than three writs of garnishment, exclusive of writs not effective because of priority of previous writs, have been served upon the employer within any period of twelve consecutive months after (Date).

2. An employee may institute a civil action for damages for wages lost as a result of a violation of this section within ninety days after such violation. Damages recoverable shall not exceed lost wages for six weeks and in such action the court also may order the reinstatement of such discharged employee. Not more than ten per centum of the damages recovered in such action shall be subject to any claims, attachments or executions by any creditors, judgment creditors or assignees of such employee.

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[272] N.Y. CIV PRAC. LAWS & RULES § 5252 (McKinney 1967). *See Hearings* at 666 (statement of Mr. David Caplovitz):

> Although eliminating garnishment is probably a desirable long-run objective, I would urge the Committee to consider a more modest proposal now, the adoption of a stronger version of the New York State law which prohibits employers from firing employees because of garnishments. The New York law now applies only to the first garnishment, but there is no reason why such a law should not cover two or even three garnishments.

VIII. Conclusion

We are no longer in an era where debt is an unusual catastrophe. Buying on credit is now openly solicited by saturation advertising campaigns and occasionally by questionable sales methods. Millions of Americans have responded to the invitation to "buy now and pay later." An unfortunate, but perhaps unavoidable, by-product of credit selling has been the few who fall by the wayside—those, who for one reason or another, do not pay their debts. Until recently the law has treated these unfortunates with a sense of moral outrage, depriving them of the goods they attempt to purchase, exacting interest, penalties, collection fees, and legal fees from their wages until they eventually lose their jobs and face the modern equivalent of a debtor's prison—a lifetime sentence of irregular employment, steadily mounting debts, and the degradation of being a welfare recipient.

A debtor should not be treated as an unscrupulous deadbeat, but rather as a casualty of our credit economy. To punish a debtor by reducing him to a status in which he is a drain on society is not only unfair, but foolish. The law has recognized the importance of giving debtors a second chance to become productive members of society through the Bankruptcy Act; the same philosophy is also embodied in restrictions of wage assignments and confessions of judgment. But it is only recently that the impact of wage garnishment has been scrutinized.

Wage garnishment in Washington defeats the purpose of many of our other laws designed to give the debtor a second chance; the remedy, as it now operates, is perhaps the last holdover from an era in which debt was considered a moral wrong. People selling credit must expect a certain amount of bad debts as a cost of doing business. To allow creditors to inflict tremendous costs on society as a whole by extracting every cent possible from debtors is self-defeating, from both the legal point of view and, over the long run, the creditors' point of view. The goal of the law should be to force the debtor to pay all he is able to pay, while leaving him in a position to continue functioning as a productive member of society.

The recommended changes in Washington's garnishment law go a long way toward meeting this goal. The debtor is still forced to pay his debts, but he is forced to do so without the specter of job loss or completely inadequate income. Creditors may have to wait longer to be paid, but this burden is at least partially offset by the reduced

possibility of a debtor losing or quitting his job, or going into bankruptcy and thus stopping payment entirely. The burden upon employers is more difficult to measure; but the elimination of prejudgment wage garnishment and the imposition of a notice requirement should keep them from being inundated with garnishments. Whatever costs remain are more than offset by the reduced burdens on society as a whole.

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APPENDIX

TABLE 1

DISPOSITION BY TYPE OF DEBT

Type of Creditor[1]	Number of Cases[2]	Bad Checks	Total[3] Obligations	Average Obligations	Number Double Actions	Number of Executions	Defaults	Confessed Judgments	Trial Judgments	No Service	Discharge[4]	Judgment[5] by Agreement	Judgment[6] (Type Unknown)
Appliance Dealers	4 2%		611.34	152.84	2(50 %)[7]	2(50 %)	3(75 %)	1(25 %)					
Auto, Garage & Tires	11(10) 6%	2	1257.39	125.74	6(60 %)	4(40 %)	7(70 %)			3(30 %)			
Clothing Stores	3 1.5%	1	146.79	48.76	2(66.7%)	1(33.3%)	3(100 %)						
Commercial Banks	1 .5%	1	79.50	79.50	1(100 %)					1(100 %)			
Credit Unions	1 .5%		717.53	717.53		1	1						
Department Stores	8 4%	2	1124.84	140.61	4(50 %)	4(50 %)	7(87.5%)			1(12.5%)			
Finance Companies	29 15%		11,244.98	387.73	18(62.1%)	11(37.9%)	18(62.1%)	4(13.8%)	3(10.3%)	2(6.6%)	1(3.4%)	1(3.4%)	
Food & Dairy	27(22) 14%	25[8]	568.94	25.86	17(77.3%)	5(22.7%)	15(68.2%)	1(4.5%)		6(27.3%)			
Fuel Oil & Coal	9 5%		322.57	53.43	4(66.7%)	2(33.3%)	2(33.3%)	2(33.3%)		1(16.7%)	1(16.7%)		
Furniture Stores	2 1%		471.41	235.71	1(50 %)	1(50 %)			1(50 %)	1(50 %)			
Hosp., Medical, Dental	24(19) 13%		4315.31	227.12	10(52.6%)	9(47.4%)	12(63.2%)	1(5.3%)		2(10.5%)	2(10.5%)	2(10.5%)	
Jewelry Stores	4 2%		333.55	83.39	2(50 %)	2(50 %)	3(75 %)			1(25 %)			
Notes to Individuals	3 1.5%		777.33	259.11	2(66.7%)	1(33 %)	3(100 %)						
Service Sta. & Oil Cos.	5 (2) 3%		707.06	353.53		2(100 %)	2(100 %)						
Rent	11(10) 6%		1953.32	195.33	4(40 %)	6(60 %)	1(10 %)	2(20 %)	3(30 %)	2(20 %)	1(10 %)		1(10 %)
Record Clubs, Encyclo.	1 .5%		146.08	146.08		1(100 %)	1(100 %)						
Utility Bills	2(0) 1%												
TV,Sales, Rntl., Repr.	4 2%		319.92	79.98	3(75 %)	1(25 %)			3(75 %)	1(25 %)			
Other[9]	42(38) 22%	5	4377.76	118.32[10]	24(63.2%)	14(36.8%)	17(44.7%)	3(7.9%)	2(5.3%)	10(26.3%)	3(7.9%)	1(2.6%)	2(5.3%)
Totals[11]													

NOTES:

[1] In only 42 cases of a total sample of 187 did the original creditor bring the action. The obligation had been assigned to a collection agency in 145, or 77.5%, of the actions. Generally, finance companies do not assign their debts for collection.

[2] This table is based on a sample of 180 cases. Seven transcript executions were excluded from the original sample because of insufficient data. Several cases, usually involving a collection agency which had acquired more than one debt owed by a particular individual, include more than one type of obligation. When this occurred each type of obligation involved was tabulated under "Number of Cases"; however, these cases were excluded in computing the remainder of the table. The number of cases remaining after this exclusion is shown in parentheses. The percentages shown are rounded to the nearest ½; the total does not equal 100.

[3] This is the amount claimed before any interest (except that included in the original contract) or fees are added.

[4] This includes cases discharged either upon the plaintiff's or the court's motion (other than for lack of service) with or without prejudice to either party.

[5] These are settlements noted in the files. They usually involve settlements occurring during the course of a trial.

[6] These are cases for which the amount of a judgment but not the type of judgment was recorded.

[7] These are percentages of the number of cases for the particular type of obligation involved.

[8] The "Food & Dairy" category is made up almost entirely of bad checks to grocery stores. There is, of course, no way of knowing how many of these actually represent money spent on groceries.

[9] This category includes both miscellaneous causes of action (In one case an irate purchaser of a sick Scotch Terrier was attempting to garnish his neighbor's wages.), and also includes those cases where the type of underlynng obligation was not evident from the files. These latter cases were usually listed as open accounts to a named individual.

[10] There is one case in this category in which the amount of the underlying obligation was not recorded. Therefore the average obligation figure was arrived at by dividing by 37.

[11] For comparison of totals and percentage relationships see other Tables.

TABLE 2
TYPES OF ACTIONS

	No.	%
Transcripts[1]	7	3.8
Executions	73	39.0
Double Actions[2]	107	57.2
TOTAL CASES	187	

[1] These are executions on judgments entered in Justice Courts other than Seattle District Justice Court and for which it was impossible to obtain complete information.
[2] This term refers to garnishments instituted prior to judgment. Usually both the garnishment and main action are filed simultaneously.

TABLE 3
DISPOSITION OF CASES—MAIN ACTION

Type of Disposition	*Number of Cases (%)*	*Total Judgments*	*Average Judgment*
Default Judgment	104 (55.6)	$21,940.	$211.
Confession of Judgment	16 (8.6)	3,871.	242.
Trial Judgment	13 (6.9)	3,110.	239.
No Service	32 (17.1)	. . .	. . .
Dismissal	9 (4.8)		
Other (Information Incomplete)	9 (4.8)		
Judgment By Agreement	4 (2.1)	1,402.	350.
TOTAL CASES	187 (99.9)	$30,323.	$221.*

* Based on the number of cases (137) resulting in final judgment.

TABLE 4
DISPOSITION—PREJUDGMENT GARNISHMENTS

Type of Disposition	*Number of Cases (%)*	*Total Judgments*	*Average Judgment*
Default Judgment	49 (45.8)	$ 9,395.	$192.
Confession of Judgment	8 (7.5)	2,344.	293.
Judgment By Agreement	4 (3.7)	1,402.	351.
Trial Judgment	5 (4.7)	1,418.	284.
No Service	32 (29.9)		
Dismissal	9 (8.4)		
TOTAL CASES	107 (100.0)[1]	$14,559.	$221.

[1] This figure suggests that 57.2% of the 187 cases in the survey involved the use of prejudgment garnishment. However, this table does not include executions on unsatisfied judgments which themselves involved earlier use of prejudgment garnishment. The survey of Justice Court cases revealed that about 70% of all suits filed involve the use of garnishment prior to judgment.

TABLE 5

DISPOSITION OF GARNISHMENT ACTIONS

Type	*Number of cases (%)*	*Total Amounts*	*Average Amounts*
Garnishee Defendant Discharged	82 (43.7)	$....	$....
Answer No Funds & G.D.[2] Discharged	32 (17.1)	....	....
No Service Discharge[3]	33 (17.6)	....	....
G.D. Ordered to Pay	31 (16.6)	2,545.	82.06
Default Against G.D.	8 (4.2)	606.	75.70
TOTAL CASES	186[4](99.2)	....	....

[1] This category includes both cases in which the garnishee defendant (the employer, in wage garnishment actions) answered with an amount owed the debtor and those in which the garnishee defendant was discharged prior to answer.
[2] Garnishee Defendant
[3] No service upon defendant-debtor, resulting in the discharge of the garnishee defendant.
[4] On 1 additional case, information was insufficient.

TABLE 6

EXEMPTIONS

TOTAL NUMBER	13 (7% of the 187 cases in the sample[1])
TOTAL AMOUNT	$940.00
AVERAGE AMT.	72.31[2]

[1] Overall figures obtained from the Civil Clerk, Seattle District Justice Court confirm that exemptions are requested in only 6.5% of all garnishments. When debtors appear at the office of the clerk they are asked if they wish to defend on all or any part of the obligation. If they do, they must pay the $1.50 statutory fee. If they are uncertain, no fee is charged and the obligation will run to default. If the debtor answers no to possible defenses he is asked whether he wishes to confess judgment.
[2] The maximum exemption allowable per week under the Washington statutes is 50 dollars, for a debtor with 3 or more dependents. See discussion in text, at page 761.

Of these 13 exemptions, 9 (69%) arose in actions involving the use of prejudgment garnishment. Of these 9 actions, 3 resulted in a trial judgment; in the other 6, the debtor confessed judgment. As to the eventual outcome of the garnishments in which exemptions were claimed: a dollar amount was returned in 10 of the cases in an average amount of $123.98, and in six of these cases the garnishee defendant was ordered to pay. In all cases in which the garnishee defendant was ordered to pay, the order was either for the full amount of the return or the full amount of the debt.

TABLE 7

	FEES			
Type[1]	*Number of Cases Allowed*	*Total Amount*	*Average Amount*	*Modal Amount*
Attorney Fees	132	$2,036.	$15.42	$5.00[2]
Interest	76	1,386.	18.23	4.00-10.00[3]
Service Fees	128	654.	5.11	6.00[4]

[1] Filing and Library Fees are $4.00 and $1.50 respectively, and should also be included in considering the total amount of fees in the typical case. Since they remain constant they are not tabulated here on a per case basis.

[2] Deviation between the arithmetic average and the mode is primarily due to the attorney fees allowed for bad checks, which are larger than the allowance for reasonable attorney fees found in many simple contracts.

[3] In the interest category, deviation between mean and mode can largely be attributed to the frequency of actions on loans by finance companies. These notes provide for a fixed amount of interest and a rate on default, and are for an average obligation of $387.73. *see* Table 1.

[4] Deviation in this category can be attributed to differences in mileage traveled. However, there are some questions as to the ethical nature of these service charges. For a general discussion of this point, see textual discussion accompanying note 178 *supra*.