10-1971

James v. Strange

Lewis F. Powell Jr.

lfp/ss 1cc 3/10/72

No. 71-11 JAMES v. STRANGE

Preliminary Memorandum
for File

I have read the briefs in the above case, and will need no bench memorandum.

The facts are simple: Kansas has a statute, called "Aid to Indigent Defendants Act", which provides - in relevant part - that where the state furnishes counsel to an indigent defendant:

> ". . . the defendant shall be liable to the State of Kansas for a sum equal to such expenditure (the cost of providing counsel), and such sum shall be recovered, if necessary, by entering the amount of the expenditure . . . as a judgment against the defendant."

St. - judgment creed.
Df. - judgment debtor

Question:

Whether the above statute is an unconstitutional condition or restraint on the right of an indigent to be provided free counsel by the state.

A three judge court (Appendix to Jurisdictional Statement) held the statute unconstitutional, saying:

> "It is apparent that the statute needlessly encourages indigents to do without counsel and consequently infringes on the right to counsel as explicated in Gideon v. Wainwright."

The Attorney General of Kansas has filed a rather inept brief, supporting the constitutionality on the ground that a state has the right to recoup from an indigent defendant if and when such defendant becomes

able to reimburse the state for the free legal services.

The brief notes (p. 10) that a number of states have "reimbursement provisions" generally similar to the Kansas law (p. 10 of Appellant's brief), including Virginia.

The brief also refers to 18 U. S. C. 3006A(f) - as being a federal reimbursement provision.

The Kansas brief also quotes Mr. Justice Stewart in Rinaldi v. Yeager, 384 U. S. 305 (1966) as follows:

> "We may assume the state can validly provide for the recoupment of the cost of appeals from those who later become financially able to pay."

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Issue is not whether we think statute is wise, desirable or ~~[illegible]~~ but whether the statute is unconst.?

See "Notice" issue - below.

Mr. Collister (Asst. A/G)

Statute goes beyond allowing state to take a judgment - it creates a lien; allows fraudulent conveyance to be set aside.
(Not much help from this argument)

Mr. Wilkinson

Strange pled guilty

(Less help from this argument !!)

2/3 0

J. Stewart made this point.

There is a Notice issue that 3 Judge Court ignored - See p 3 of Green Brief - Appellee's Motion to Dismiss. J. Stewart suggested that if we disagree with Dist Ct. on Const. issue, we might remand on this Notice ? and

lfp/ss 1cc 3/23/72

No. 71-11 JAMES v. STRANGE
Argued 3/22/72

Tentative Impressions*

This case involves the validity of the Kansas statute which allows the state to take a judgment against an indigent to recover counsel fees. The three-judge district court held the statute unconstitutional - as infringing the right to counsel, citing Gideon.

Yet, it was conceded in argument that there is nothing in the record to support the view that the statute "chills" or deters indigents from exercising their right to counsel.

My Tentative Conclusion:

I would reverse the three-judge district court, as I do not think this statute violates a constitutional right.

The statute may be bad legislation and bad policy, but the solution is legislative action - not requiring a decision of constitutional dimensions by this Court.

* * * * *

*These impressions are dictated on the afternoon following argument to record my initial and tentative impressions. I will have read, in preparation for the arguments, the principal briefs, some of the cases and the bench memo. I hope to do further study before the Conference. My views are subject to change and to the discussion at the Conference.

Near the end of the argument, a question was raised as to whether the respondent received adequate notice. See p. 3 of Green Brief (appellee's motion to dismiss). Justice Stewart suggested that we might remand on this notice issue.

Justice Powell:

I thought I should write you a brief prefatory note on James v. Strange.

This is obviously a very bad statute, but the question is finding a tenable constitutional reason for striking it. The search for a constitutional rationale is made more difficult by the fact that many states have recoupment laws of many different sorts, and I wanted to be certain that the opinion was written in such a way as to excise the cancerous parts of this Kansas statute without seeming to jeopardize the general principle of recoupment. ThAt of course makes everything we say very sensitive.

For these and other reasons I have tried to keep this a crisp, short opinion without, however, omitting features important to our analysis.

As the opinion represents in large part my own research without help from the briefs or the opinion of the court below I want to recheck it for accuracy yet another time, though I have already made every effort to have my statements correct.

There are three possible ways to approach this case.

The first is through the rationale of the Sixth Amendment and the right to counsel. The lower court took this route. This did not seem to accord with the wishes of the conference which wanted a narrow opinion. I am convinced there is no way to draft this opinion on a rigtht to counsel basis without seeming to jeopardixe every state recoupment law of this type. Once we get into the business of saying a particular staute chills the right to counsel, there will be no end to the chilling, no rational way to save these statutes. Also,

I keep thinking that everybody's right to counsel is chilled in the sense that they know if they hire counsel, they know they have to pay for it.

There is also the due process ground which I think is inapplicable. If we get to the point of requiring notice of the debt for all these recoupment statutes to be valid, then we would be striking every recoupment statute in the country since very few provide for notice to the defendant of his debt before counsel is appointed him.

Also, once we get to the point of requiring notice, then we are slowly falling into what I think would be the liberAL's desires to have all of these statutes invalidated under the right to counsel thesis. If you have to notify a guy of the debt right before you assign him counsel, then it obviously is going to "chill" him a little bit, and all these recoupment statutes are in trouble.

Try and read the whole thing before you do anything with it. I think the opinion holds together pretty well but this is conceptually a tough nut.

JHW

DOUGLAS, J. Affirm

MARSHALL, J. Affirm

If judge had explained the State right to Δ, he might feel different.

Statute ~~eliminates~~ eliminates all exemptions*. This may be denial of due process & equal protection

BRENNAN, J. Affirm

The interest build-up could be substantial

BLACKMUN, J. Affirm

On grounds suggested by Thurgood

STEWART, J. Affirm (Tentative)

A reasonable plan would be OK — but this one goes too far.

Statute might affect Miranda rights.

Would not write broadly — some law for recoupment could be valid.

POWELL, J. Affirm (Subject to how opinion is written)

If we can write a narrow opinion along lines suggested by Thurgood.

I think State has power to enact statutes of this character.

WHITE, J. Reverse (Tentative)

Agree with Potter as to statute being very bad.

But this party has not been chilled. This is not a 1st Amend case.

Not clear that this is a denial of due process

REHNQUIST, J. Reverse

Memo: Chief Justice. Reverse ~~Reverse~~ Affirm (Chief, after discussion, agreed with my position.]

No more "chilling" than the situation that exists as to people who pay - esp. more in low income brackets

See Rinaldi v Yeager — court costs

* Except Homestead (Wages can be garnisheed)

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P. S.	THE C. J.	W. O. D.	W. J. B.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
							4/3/72	

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
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No. 71-11 JAMES v. STRANGE

This case
~~The case before us~~ presents a constitutional challenge to a Kansas recoupment statute, whereby the state may recover in subsequent civil proceedings counsel and other legal defense fees expended for the benefit of indigent defendants. The three-judge court below held the statute unconstitutional that it burdened, finding it to be an impermissible burden ~~and infringed~~ upon the right to counsel established in Gideon v. Wainwright, 372 U. S. 335 (1963).[1] The state has appealed, and we noted jurisdiction — U. S. —.

The relevant facts ~~may be briefly summarized~~ are not disputed. Appellee Strange was arrested and charged with first degree robbery under Kansas law. He appeared before a magistrate, professed indigency, and accepted appointed counsel under the Kansas Aid to Indigent Defendants Act.[2] Appellee was then tried in the Shawnee County District Court on the reduced charge of pocket picking. He pled guilty and received a suspended sentence and three years probation.

Thereafter, appellee's counsel applied to the state for payment for his services and received $500 from the Aid to Indigent Defendants Fund. Pursuant to Kansas' recoupment statute, the Kansas Judicial Administrator requested appellee to reimburse the state within sixty days or a judgment for the $500 would be docketed against him. Appellee contends this procedure violates his constitutional right to counsel.

I

It is necessary at the outset to explain the terms and operation of the challenged statute.[3] When the state provides indigent defendants with counsel or other legal services, the defendant becomes obligated to the state for the amount expended in his behalf.[4] Within 30 days of the expenditure, defendants are notified of their debt and given 60 days to repay it.[5] If the sum remains unpaid after the 60-day period, a judgment is docketed against defendant for the unpaid amount. Six percent

annual interest runs on the debt from the date the expenditure was made. The debt becomes a lien on the real estate of defendant and may be executed by garnishment or in any other manner provided by the Kansas code of civil procedure. The indigent defendant is not, however, accorded any of the exemptions provided by that code for other judgment debtors except the homestead exemption. If the judgment is not executed within five years, it becomes dormant, ceases to operate as a lien on the debtor's real estate, but may be revived in the same manner as other dormant judgments under the code of civil procedure.[5]

Several features of this procedure merit mention. The entire program is administered by the judicial administrator, a public official, but appointed counsel are private practitioners. The statute nowhere defines the circumstances under which the state would seek reimbursement. Recovered sums do, however, revert to the Aid to Indigent Defendants Fund.

The Kansas statute is but one of many state recoupment laws applicable to counsel fees and expenditures paid for indigent defendants.[6] The statutes vary widely in their terms. Under some statutes, the indigent's liability is to the county in which he is tried; in others to the state. Alabama and Indiana make assessment and recovery of an indigent's counsel fees discretionary with the court. Florida's recoupment law has no statute of limitations and the state is deemed to have a perpetual lien against the defendant's real and personal property and estate.[7] Idaho, on the other hand, has a five-year state of limitations on the recovery of an "indigent's" concealed assets at the time of trial and a three year statute for the recovery of later acquired ones. In Virginia and West Virginia, the amount paid to court appointed counsel is assessed only against convicted defendants as part of costs, while Oregon's recoupment statute expressly applies "whether or not a trial is had and whether or not the individual prevails."

The same Oregon statute assesses costs against defendant on a formula prescribed by the Public Defender Committee while North Dakota sets counsel fees "at a reasonable rate to be determined by the court." It is thus readily apparent that state reimbursement laws and procedures ~~vary broadly~~ differ significantly in their particulars.[8] Given the wide ~~and substantial~~ differences in the features of these statutes, any broadside pronouncement on their general validity ~~of~~ would be inappropriate.

We turn ~~thus~~ therefore to the Kansas statute, aware that our reviewing function is a limited one. We do not inquire whether this statute is wise, or desirable, or "whether it is based on assumptions scientifically substantiated." Roth v. United States, 354 U. S. 476, 501 (1957) (Harlan J., concurring). Misguided laws may nonetheless be constitutional. It has been noted both in the briefs and at argument that only $17,000 has been recovered under the statute in its almost two years of operation, and that this

amount is negligible compared to the total expended.[9] Our task, however, is not to weigh this statute's effectiveness but its constitutionality Whether the returns under the statute justify the expense, the time, and efforts of state officials is for the ongoing supervision of the legislative branch.

The court below invalidated this statute on the grounds that "it needlessly encourages indigents to do without counsel and consequently infringes on the right to counsel as explicated in Gideon v. Wainwright, supra." 322 F. Supp. at ___ _. In Gideon, counsel had been denied an indigent defendant charged with a felony because his was not a capital case. The Court has often has voided state statutes and practices which denied to accused indigents the means to present effective defenses in courts of law. Douglas v. California, 372 U. S. 353 (1963); Draper v Washington, 372 U. S. 487 (1963); Lane v. Brown, 372 U. S. 477 (1963); Griffin v. Illinois, 351 U. S. 12 (1965).

Here, however, Kansas has enacted laws both to provide and compensate from public funds counsel for the indigent.[10] There is certainly no denial of the right to counsel in the strictest sense. Whether the statutory obligations for repayment impermissibly deter the exercise of this right is a question we need not reach, for we find the statute before us constitutionally infirm on other grounds.

II

The state has asserted in argument before this court that the statute "has attempted to treat them [indigent defendants] the same as would any civil judgment debtor be treated in the State courts, . . ."[11] Again, in its brief the state asserts that "for all practical purposes the methods available for enforcement of the judgment are the same as those provided by the Code of Civil Procedure or any other civil judgment."[12] The challenged portion of the statute thrice alludes to means of debt recovery prescribed by the Kansas Code of Civil Procedure.[13]

Yet the ostensibly equal treatment of indigent defendants with other civil judgment debtors recedes sharply as one examines the statute more closely. The statute ~~xtixx~~ stipulates that save for the homestead, "none of the exemptions provided for in the code of civil procedure shall apply to any such judgment . . ." @ 14 This provision strips from indigent defendants the array of protective exemptions Kansas has erected for other civil judgment debtors, including restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe personal or family sickness, and exemption from attachment and execution on a debtor's personal clothing, books and tools of trade. For the ~~debtor who~~ head of a family, the exemptions afforded other judgement debtors become more extensive, and cover certain furnishings, food, fuel and clothing, means of transportation, ~~certain~~ pension funds, and even a family burial plot or crypt. @ 15

Of the above exemptions, none is more important to a debtor than his protection from unrestricted wage garnishment. The debtor's wages are his sustenance, with which he supports himself and his family. The average low income wage earner must spend nearly nine-tenths of those wages for items of immediate consumption.[16] This Court has recognized the potential of certain garnishment proceedings to "impose tremendous hardships on wage earners with families to support." Sniadach v. Family Finance Corp., 395 U. S. 337, 340 (1969).[17] Kansas has likewise perceived the burden to a debtor and his family when wages may be subject to wholesale garnishment. Consequently, under its code of civil procedure, the maximum which can be garnisheed is the lesser of 25% of a debtor's weekly disposable earnings or the amount by which those earnings exceed thirty times the federal minimum hourly wage. No one credit may issue more than one garnishment during

any one month, and no employer may discharge an employee because his earnings have been garnisheed for a single indebtedness.[18] To deny these protections to the once criminally accused is to risk denying him the very means needed to keep himself and his family afloat.

The indigent's predicament under this statute comes more into focus when compared with that of one who has hired counsel in his defense. Should the latter prove unable to pay and a judgment be obtained against him, his obligation would become enforceable under the relevant provisions of the Kansas code of civil procedure. But, unlike the indigent under the recoupment statute, the code's exemptions would protect this judgment debtor.

As a further matter, the imposition under the statute of six percent annual interest applies to the debts of indigent defendants and is not exacted from other civil judgment debtors

under the Kansas code of civil procedure. The interest build-up under this statute, moreover, is not insubstantial. In the five years before the judgment becomes dormant, interest accumulations could lift appellee's $500 debt to $669. If the dormant judgment is revived within the statutorily prescribed two years, the principal and interest might total over $750.00.[19]

It may be argued that an indigent accused, from whom the state has provided counsel, is in a different class with respect to collection of his indebtedness than a judgment creditor whose obligation arose from a private transaction. But other Kansas statutes providing for recoupment of public assistance to indigents do not feature the severe provisions imposed on indigent defendants in this case. Kansas, has enacted, as have many other st laws for state recovery of public welfare assistance. Yet the l as welfare recipient, unlike the indigent defendant, does not face denial of exemptions or forced accumulation of interest on his public debt.[20]

We recognize, of course, that the state's claim to reimburse may take precedence, under appropriate circumstances, over the claims of private creditors and that enforcement procedures with respect to judgments need not be identical.[21] This does not mean, however, that a state may impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor. The state itself in the statute before us analogizes the judgment lien against the indigent defendant to other "judgments under the code of civil procedure." But the statute then strips the indigent defendant of the very exemptions designed primarily to benefit debtors of low and marginal incomes.

The Kansas statute provides for recoupment whether the indigent defendant is acquitted or found guilty. If acquitted, the indigent finds himself obligated to ~~pa~~ repay the state for a service the need for which was forced upon him by the state.

It is difficult to see why such a defendant, adjudged to be innocent of the state's charge, should be denied basic exemptions accorded all other judgment debtors. The indigent defendant who is found guilty is uniquely disadvantaged in terms of the practical operation of the statute. A criminal conviction usually limits employment opportunities. This is especially true where a prison sentence has been served. It is in the interest of society and the state that such a defendant, upon satisfaction of the criminal penalties imposed, be afforded a reasonable opportunity of employment, rehabilitation and return to useful citizenship. There is limited incentive to seek legitimate employment when, after serving a sentence during which interest has accumulated on the indebtedness for legal services, the indigent knows that his wages will be garnisheed without the benefit of any of the customary exemption.

Appellee in this case has now married, works for a modest wage, and has recently become a father. To

deprive him of all protection of his wages and intimate personalty and simultaneously to compel the accumulation of interest on his debt discourages the very search for self-sufficiency which might make of the criminally accused a contributing citizen. Not only does this treatment not accord with the treatment of indigent recipients of public welfare or with that of other civil judgment debtors to whom the Kansas statute makes reference.[22] The Kansas statute is alone among this nation's recoupment laws in ~~expressing~~ expressly stripping a defendant-debtor of basic exemptions and in compelling the accumulation of interest on his obligation.[23]

III

Rinaldi v. Yaeger, 384 U. S. 305 (1966) confronted this Court with a situation comparable in some respects to the case at hand. Rinaldi involved a New Jersey statute which required only those indigent defendants who were sentenced to confinement in state institutions to reimburse the state the costs of a transcript

on appeal. In Rinaldi, as here, a broad ground of decision was urged, namely the voidance of this statute as discouraging an indigent's freedom to appeal. The Court, however, found a different basis for decision - that "to fasten a financial burden only upon those unsuccessful appellants who are confined in state institutions . . . is to make an invidious discrimination "in violation of the equal protection clause. Id. at 309.

Rinaldi affirmed that the equal protection clause "imposes a requirement of some rationality in the nature of the class ~~signed~~ singled out." Id. at 308-9. This requirement is lacking where, as in the instant case, the state has subjected indigent defendants to uniquely harsh conditions of repayment. This case, to be sure, differs from Rinaldi in that ~~there~~ here all indigent defendants are treated alike. But to impose these conditions solely on a class of debtors who were provided counsel as required by the Constitution is to practice, no less

than in Rinaldi, a discrimination which the equal protection clause proscribes.

In Rinaldi, the Court assumed arguendo "that a legislature could validly provide for replenishing a county treasury from the pockets of those who have directly benefitted from county expenditures." Id. at 309. We note here also that the state interests represented by recoupment laws may prove important ones. Recoupment proceedings may protect the state from fraudulent concealment of assets and assertions of indigency. Many states, moreover, face expanding criminal dockets, and this Court has required appointed counsel for indigents in widening classes of cases[24] and stages of prosecution.[25] Such trends have heightened the burden on public revenues, and recoupment laws reflect legislative efforts to recover some of the added costs. Finally, federal dominance of the nation's major revenue sources has encouraged state and local governments to attempt new methods of conserving public funds,

not only through the recoupment of indigents' counsel fees but of other forms of public assistance as well.

We thus recognize that state recoupment statutes may betoken legitimate state interests. But these interests are not thwarted by requiring more even treatment of indigent criminal defendants with other classes of debtors to whom the statute itself repeatedly makes reference. State recoupment laws, notwithstanding the state interests they serve, need not blight in such discriminatory fashion the hopes of indigents for self sufficiency and self respect. For the state to profess fair treatment of defendant-debtors while fastening upon them unique impediments has precisely this effect. The statute before us bears earmarks of punitiveness and discrimination which violate the rights of citizens to equal treatment under the law.

The judgment of the court below is affirmed.

FOOTNOTES

1. The opinion of the three-judge court is reported in 323 F. Supp. 1230 (D. Kan. 1971).

2. K. S. A. 1971 Supp. 22-4501 to 22-4515.

3. K. S. A. 1971 Supp. 22-4513. The statute reads as follows:

STATUTE INVOLVED

K.S.A. 1970 Supp. 22-4513, the validity of which was challenged in the district court reads as follows:

"(a) Whenever any expenditure has been made from the aid to indigent defendants fund to provide counsel and other defense services to any defendant, as authorized by section 10 [62-3110], such defendant shall be liable to the state of Kansas for a sum equal to such expenditure, and such sum may be recovered from the defendant by the state of Kansas for the benefit of the fund to aid indigent defendants. Within thirty (30) days after such expenditure, the judicial administrator shall send a notice by certified mail to the person on whose behalf such expenditure was made, which notice shall state the amount of the expenditure and shall demand that the defendant pay said sum to the state of Kansas for the benefit of the fund to aid indigent defendants within sixty (60) days after receipt of such notice. The notice shall state that such sum became due on the date of the expenditure and the sum demanded will bear interest at six percent (6%) per annum from the due date until paid. Failure to receive any such notice shall not relieve the person to whom it is addressed from the payment of the sum claimed and any interest due thereon.

Should the sum demanded remain unpaid at the expiration of sixty (60) days after mailing the notice, the judicial administrator shall certify an abstract of the total amount of the unpaid demand and interest thereon to the clerk of the district court of the county in which counsel was appointed or the expenditure authorized by the court, and such clerk shall enter the total amount thereof on his judgment docket and said total amount, together with the interest thereon at the rate of six percent (6%) per annum, from the date of the expenditure thereof until paid, shall become a judgment in the same manner and to the same extent as any other judgment under the code of civil pro-

(over)

4. Failure to receive notice, however, does not relieve the person to whom it is addressed of the obligation.

5. A dormant judgment may be revived within two years of the date on which the judgment became dormant. K. S. A. 1971 Supp. 60-2404.

6. There is also a federal reimbursement provision, 18 U. S. C. § 3006A(f):

> (f) Receipt of other payments.—Whenever the United States magistrate or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

7. The board of county commissioners has discretion to compromise or release the lien, however. Fla. State Ann. § 27. 56 (1971 Supp.).

8. State recoupment statutes, including those quoted above, are as follows:

"Ala. Code, Title 17, § 318(12) (1969 Supp.); Alaska Stat. Ann. 1962 § 12.55-020; Fla. Stat. Ann. § 27.56 (1971 Supp.); Idaho Code Ann. § 19-858 (1971 Supp.); Ind. Ann. State. 1956, 9-3501 (1971 Supp.); Iowa Code Ann. § 775.5 (1971 Supp.); Md. Code 1966, Art. 26 § 9; N. D. C. C., § 29-07-01.1; N. M. Stat. Ann., 1953, § 41-22-7; Ohio R. C. § 2941-51 (1970 Supp.); Ore. Rev. State. § 137.205; S. C. Code 1962, § 17-283 (1971 Supp.); 2 Tex. C. C. P., Art. 26.05 §§ 3, 5; Tex. C. C. P., Art. 1018; Va. Code Ann. § 14.1-184 (1971 Supp.); W. Va. Code Ann. (1955) § 6190; 29 Wis. State Ann. §256.66."

9. For fiscal 1971 $400,000 was appropriated to fund the program.

10. See n. 2, supra.

11. Transcript of Oral Argument, p. 9. The state does admit that exemptions for (other) civil judgment debtors are broader than for indigent defendants, a matter we will address forthwith. Id. p. 10.

12. Brief of Appellant, p. 7.

13. See K. S. A. 1971 Supp. 60-701 to 724, 60-2401 to 2419.

14. The exemptions (in the civil code) are set forth in K. S. A. 1971 Supp. 60-2301 to 60-2311.

15. K. S. A. 1971 Supp. 60-2304 and 60-2308.

16. Bureau of Labor Statistics, Handbook at Labor Statistics 281 (1968). Low wage earners are defined as families with after-tax income of less than $5,000.

17. The Court in Sniadach held that Wisconsin's prejudgment wage garnishment procedure, as a taking of property wihtout notice and prior hearing, violated the due process clause of the Fourteenth Amendment.

18. K. S. A. 1971 Supp. 60-2310(b) and 60-2311. Section 60-2310 also provides further debtor protection from wage garnishment at a time of disabling personal sickness and from professional collecting agencies. See K. S. A. 1971 Supp. 60-2310(c) and (d). See also Bennett, The 1970 Kansas Legislature in Review, 39 J. B. A. K. 107, 178, (1970), which points out that the state's restrictions on garnishments has been made to conform to Title III of the federal Consumer Credit Protection Act, 82 Stat. 163. Kansas, however, had extensive restrictions on garnishment long before the federal act was passed.

19 ~~15.~~ ~~If the dormant judgment is revived within the statutorily prescribed two years, the principle and interest would total over $750.00.~~ The interest presumably would run while the judgment was dormant since ~~it~~ "a dormant judgment may be revived and have the same force and effect as if it had not become dormant. . ." (emphasis supplied) K. S. A. 1971 Supp. 60-2404.

20 K. S. A. 1971 Supp. 39-719b; 59-2006. Section 39-719b deals mainly with the recovery of assistance from an ineligible recipient. Yet even when the welfare recipient is deemed to have defrauded the state, he still escapes the interest accumulations and denied of exemptions imposed on indigent defendants:

> **39-719b.** Duty of recipient to report changes; action by board; recovery of assistance obtained by ineligible recipient. If at any time during the continuance of assistance to any person, the recipient thereof becomes possessed of any property or income in excess of the amount ascertained at the time of granting assistance, it shall be the duty of the recipient to notify the county board of social welfare immediately of the receipt or possession of such property or income and said county board may, after investigation, cancel the assistance in accordance with the circumstances.
>
> Any assistance paid shall be recoverable by the county board as a debt due to the state and the county in proportion to the amount of the assistance paid by each, respectively: If during the life or on the death of any person receiving assistance, it is found that the recipient was possessed of income or property in excess of the amount reported or ascertained at the time of granting assistance, and if it be shown that such assistance was obtained by an ineligible recipient, the total amount of the assistance may be recovered by the state department of social welfare as a fourth class claim from the estate of the recipient or in an action brought against the recipient while living. [L. 1953, ch. 224, § 2; June 30.]

21. For example, Kansas does not extend its restrictions on wage garnishment to any debt due for any state or federal tax, K. S. A. 1971 Supp. 60-2310(e)(3). This type of ~~publicke~~ public debt, however, differs from the instant case, in representing a wrongful withholding from the state of a tax on assets in the actual possession of the taxpayer and not, as here, a debt contracted under circumstances of indigency.

22. The statutes of other states, e. g., Alaska, South Carolina, West Virginia provide, as does Kansas, for recovery against indigent defendants in the same manner as on other judgments. Unlike Kansas, however, these states do not expressly subject indigents to conditions to which other civil judgment debtors are not liable. See note 8, supra, for citations.

23 See note 8, supra for citations.

Gideon v. Wainwright, supra; Douglas v. California, supra;

MEMORANDUM

TO: Mr. J. Harvie Wilkinson, III DATE: May 21, 1972

FROM: Lewis F. Powell, Jr.

No. 71-11 James v. Strange

Confirming our talk this morning, I think your excellent first draft provides at least 75% of a fine opinion.

I do not believe, however, that the interest argument will stand critical analysis. I would be inclined to omit it as a discriminatory feature, using it only to emphasize the total package of disadvantages imposed upon an indigent defendant and especially one who has been imprisoned, and is faced with the nearly insuperable task of starting out to reestablish himself as a viable, self-supporting citizen.

In this connection, we have agreed that it is desirable to emphasize the effect of denying a judgment debtor the benefit of the garnishment exemption. I suggest that you read a little general law on garnishment exemptions and perhaps include - in the text or footnotes - some commentary on the philosophy and utility of the garnishment exeeptions This is the bedrock "guts" of the discrimination in this case, as I see it.

I have dictated one rider that might fit in at the place indicated on page 9, and which - with appropriate editing - can be used to

lead up to a discussion of the importance and the utility - in terms of social ends - of the garnishment exemption.

My rider also deals with the particularly disadvantaged position of the defendant who is acquitted. It is possible that a majority of the Court would want to hold invalid any recoupment provision against an individual found to be innocent. The theory would be that if the state falsely charged a citizen, he ought not be required to repay the state for his counsel. I do not want to go this far, or to include language in the opinion that would be so construed. A state must have probable cause before charging one with crime. The accused party is not compelled to accept free counsel. He does so with presumed knowledge of the recoupment statute.

L. F. P., Jr.

71-11

Contigency footnote on the notice point.

It is true, of course, that K. S. A. 1971 Supp., 22-4504 provides that "the judge or magistrate shall inform the defendant for whom counsel is appointed that the amount expended by the ~~s~~ state in providing counsel and other defense services will be entered as a judgment against him . . ." This provision cannot, however, control the disposition of the case. At no point in the briefs or argument of the parties or in the opinion of the court below was this provision even referred to, much less debated. The Kansas courts, moreover, have applied this recoupment statute regardless of whether notice was given and even when the failure to give notice was brought to the court's attention.

Most importantly, however, no notice is required as to the very features of the statute we find most objectionable. Only general notice that a judgment will be entered against defendant is required, and no notice whatsoever need be given the defendant of the interest accumulation on his debt or the denial to him of vital protective exemptions.

The statutorily required notice cannot overcome the constitutional infirmities of the statute. A decision on this ground would only avoid the central problem in this case: the discriminatory operation of the statute on appellee and numerous other indigent defendants.

Though we emphasize the adverse impact of the unavailability of the garnishment exemptions, the other protective provisions afforded judgment debtors by Kansas law - and denied indigent defendant debtors are not inconsequential. As noted above, execution may not be levied on specified categories of a debtor's tangible personal property. For the head of a family, these exemptions include "furnishings, food, fuel and clothing, means of transportation" as well as personal clothing. Yet, the recoupment statute before us in this case provides flatly that "None of the exemptions provided for in the code of civil procedure shall apply to any such judgment (against an indigent defendant), but no such judgment shall be levied against a homestead." If one in the hapless circumstances of being an indigent defendant were fortunate enough to have a "homestead", its protection from execution would afford slight comfort if the sheriff is free to levy on the furnishings and other items of personal property.

Note to Jay - Ruth crying towel is almost as good as yours!

File James v. Strange 71-11

MEMORANDUM

TO: Mr. J. Harvie Wilkinson, Jr. DATE: May 26, 1972

FROM: Lewis F. Powell, Jr.

No. 70-87 Police Department v. Mosley

You might take a look at Justice Marshall's opinion in the above case, which involves an equal protection issue, and invalidates a Chicago ordinance.

I do not see anything in the opinion that causes me to think changes are necessary in James v. Strange. Yet, a good many cases are cited, and it might be well to take a look at the opinion.

L. F. P., Jr.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-11

James R. James, Judicial Administrator, et al., Appellants, *v.* David E. Strange.	On Appeal from the United States District Court for the District of Kansas.

[May —, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a constitutional challenge to a Kansas recoupment statute, whereby the State may recover in subsequent civil proceedings counsel and other legal defense fees expended for the benefit of indigent defendants. The three-judge court below held the statute unconstitutional, finding it to be an impermissible burden upon the right to counsel established in *Gideon* v. *Wainwright*, 372 U. S. 335 (1963).[1] The State appealed and we noted jurisdiction, — U. S. —.

The relevant facts are not disputed. Appellee Strange was arrested and charged with first-degree robbery under Kansas law. He appeared before a magistrate, professed indigency, and accepted appointed counsel under the Kansas Aid to Indigent Defendants Act.[2] Appellee was then tried in the Shawnee County District Court on the reduced charge of pocket picking. He pled guilty and received a suspended sentence and three years probation.

[1] The opinion of the three-judge court is reported in 323 F. Supp. 1230 (Kan. 1971).

[2] Kan. Stat. Ann. 1971 Supp. 22-4501 to 22-4515.

Thereafter, appellee's counsel applied to the State for payment for his services and received $500 from the Aid to Indigent Defendants Fund. Pursuant to Kansas' recoupment statute, the Kansas Judicial Administrator requested appellee to reimburse the State within 60 days or a judgment for the $500 would be docketed against him. Appellee contends this procedure violates his constitutional rights.

I

It is necessary at the outset to explain the terms and operation of the challenged statute.[3] When the State

[3] Kan. Stat. Ann. 1971 Supp. 22-4513. The statute reads as follows:

"(a) Whenever any expenditure has been made from the aid to indigent defendants fund to provide counsel and other defense services to any defendants, as authorized by section 10 [62-3110], such defendant shall be liable to the state of Kansas for a sum equal to such expenditure, and such sum may be recovered from the defendant by the state of Kansas for the benefit of the fund to aid indigent defendants. Within thirty (30) days after such expenditure, the judicial administrator shall send a notice by certified mail to the person on whose behalf such expenditure was made, which notice shall state the amount of the expenditure and shall demand that the defendant pay said sum to the state of Kansas for the benefit of the fund to aid indigent defendants within sixty (60) days after receipt of such notice. The notice shall state that such sum became due on the date of the expenditure and the sum demanded will bear interest at six percent (6%) per annum from the due date until paid. Failure to receive any such notice shall not relieve the person to whom it is addressed from the payment of the sum claimed and any interest due thereon.

"Should the sum demanded remain unpaid at the expiration of sixty (60) days after mailing the notice, the judicial administrator shall certify an abstract of the total amount of the unpaid demand and interest thereon to the clerk of the district court of the county in which counsel was appointed or the expenditure authorized by the court, and such clerk shall enter the total amount thereof on his judgment docket and said total amount, together with the inter-

provides indigent defendants with counsel or other legal services, the defendant becomes obligated to the State for the amount expended in his behalf. Within 30 days

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est thereon at the rate of six percent (6%) per annum, from the date of the expenditure thereof until paid, shall become a judgment in the same manner and to the same extent as any other judgment under the code of civil procedure and shall become a lien on real estate from and after the time of filing thereof. A transcript of said judgment may be filed in another county and become a lien upon real estate, located in such county, in the same manner as is provided in case of other judgments. Execution, garnishment, or other proceedings in aid of execution may issue within the county, or to any other county, on said judgment in like manner as on judgments under the code of civil procedure. None of the exemptions provided for in the code of civil procedure shall apply to any such judgment, but no such judgment shall be levied against a homestead. If execution shall not be sued out within five (5) years from the date of the entry of any such judgment, or if five (5) years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant and shall cease to operate as a lien on real estate of the judgment debtor. Such dormant judgment may be revived in like manner as dormant judgments under the code of civil procedure.

"(b) Whenever any expenditure has been made from the aid to indigent defendants fund to provide counsel and other defense services to any defendant, as authorized by section 10 [62-3110], a sum equal to such expenditure may be recovered by the state of Kansas for the benefit of the aid to indigent defendants fund from any persons to whom the indigent defendant shall have transferred any of his property without adequate monetary consideration after the commission of the alleged crime, to the extent of the value of such transfer, and such persons are hereby made liable to reimburse the state of Kansas for such expenditures with interest at six percent (6%) per annum. Any action to recover judgment for such expenditures shall be prosecuted by the attorney general, who may require the assistance of the county attorney of the county in which the action is to be filed, and such action shall be governed by the provisions of the code of civil procedure relating to actions for the recovery of money. No action shall be brought against any person

of the expenditure, defendants are notified of their debt and given 60 days to repay it.[4] If the sum remains unpaid after the 60-day period, a judgment is docketed against defendant for the unpaid amount. Six percent annual interest runs on the debt from the date the expenditure was made. The debt becomes a lien on the real estate of defendant and may be executed by garnishment or in any other manner provided by the Kansas Code of Civil Procedure. The indigent defendant is not, however, accorded any of the exemptions provided by that code for other judgment debtors except the homestead exemption. If the judgment is not executed within five years, it becomes dormant, ceases to operate as a lien on the debtor's real estate, but may be revived in the same manner as other dormant judgments under the code of civil procedure.[5]

Several features of this procedure merit mention. The entire program is administered by the judicial administrator, a public official, but appointed counsel are private practitioners. The statute apparently leaves to administrative discretion whether, and under what circumstances, enforcement of the judgment will be sought. Recovered sums do, however, revert to the Aid to Indigent Defendants Fund.

The Kansas statute is but one of many state recoupment laws applicable to counsel fees and expendi-

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under the provisions on this section to recover for sums expended on behalf of an indigent defendant, unless such action shall have been filed within two (2) years after the date of the expenditure from the fund to aid indigent defendants."

[4] Failure to receive notice, however, does not relieve the person to whom it is addressed of the obligation.

[5] A dormant judgment may be revived within two years of the date on which the judgment became dormant. Kan. Stat. Ann. 1971 Supp. 60-2404.

tures paid for indigent defendants.[6] The statutes vary widely in their terms. Under some statutes, the indigent's liability is to the county in which he is tried; in others to the State. Alabama and Indiana make assessment and recovery of an indigent's counsel fees discretionary with the court. Florida's recoupment law has no statute of limitations and the State is deemed to have a perpetual lien against the defendant's real and personal property and estate.[7] Idaho, on the other hand, has a five-year statute of limitations on the recovery of an "indigent's" concealed assets at the time of trial and a three-year statute for the recovery of later acquired ones. In Virginia and West Virginia, the amount paid to court appointed counsel is assessed only against convicted defendants as part of costs, while Oregon's recoupment statute expressly applies "whether or not a trial is had and whether or not the individual prevails." The same Oregon statute assesses costs against defendant on a formula prescribed by the Public Defender Committee while North Dakota sets

[6] There is also a federal reimbursement provision, 18 U. S. C. § 3006A (f):

"Receipt of other payments.—Whenever the United States magistrate or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant."

[7] The board of county commissioners has discretion to compromise or release the lien, however. Fla. Stat. Ann. § 27.56 (1971 Supp.).

counsel fees "at a reasonable rate to be determined by the court." It is thus readily apparent that state reimbursement laws and procedures differ significantly in their particulars.[8] Given the wide differences in the features of these statutes, any broadside pronouncement on their general validity would be inappropriate.

We turn therefore to the Kansas statute, aware that our reviewing function is a limited one. We do not inquire whether this statute is wise, or desirable, or "whether it is based on assumptions scientifically substantiated." *Roth* v. *United States*, 354 U. S. 476, 501 (1957) (Harlan, J., concurring). Misguided laws may nonetheless be constitutional. It has been noted both in the briefs and at argument that only $17,000 has been recovered under the statute in its almost two years of operation, and that this amount is negligible compared to the total expended.[9] Our task, however, is not to weigh this statute's effectiveness but its constitutionality. Whether the returns under the statute justify the expense, time, and efforts of state officials is for the ongoing supervision of the legislative branch.

The court below invalidated this statute on the grounds that "it needlessly encourages indigents to do without counsel and consequently infringes on the right to coun-

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[8] State recoupment statutes, including those quoted above, are as follows:

"Ala. Code, Tit. 17, § 318 (12) (1969 Supp.); Alaska Stat. Ann. 1962 § 12.55-020; Fla. Stat. Ann. § 27.56 (1971 Supp.); Idaho Code Ann. § 19-858 (1971 Supp.); Ind. Ann. Stat. 1956, 9-3501 (1971 Supp); Iowa Code Ann. § 775.5 (1971 Supp.); Md. Code 1966, Art. 26 § 9; N. D. C. C., § 29-07-01.1; N. M. Stat. Ann., 1953, § 41-22-7; Ohio R. C. § 2941-51 (1970 Supp.); Ore. Rev. Stat. § 137.205; S. C. Code 1962, § 17-283 (1971 Supp.); 2 Tex. C. C. P., Art. 26.05 §§ 3, 5; Tex. C. C. P., Art. 1018; Va. Code Ann. § 14.1-184 (1971 Supp.); W. Va. Code Ann. (1955) § 6190; 29 Wis. Stat. Ann. § 256.56."

[9] For fiscal 1971 $400,000 was appropriated to fund the program.

sel as explicated in *Gideon* v. *Wainwright, supra.*" 322 F. Supp., at —. In *Gideon,* counsel had been denied an indigent defendant charged with a felony because his was not a capital case. This Court often has voided state statutes and practices which denied to accused indigents the means to present effective defenses in courts of law. *Douglas* v. *California,* 372 U. S. 353 (1963); *Draper* v. *Washington,* 372 U. S. 487 (1963); *Lane* v. *Brown,* 372 U. S. 477 (1963); *Griffin* v. *Illinois,* 351 U. S. 12 (1965). Here, however, Kansas has enacted laws both to provide and compensate from public funds counsel for the indigent.[10] There is certainly no denial of the right to counsel in the strictest sense. Whether the statutory obligations for repayment impermissibly deter the exercise of this right is a question we need not reach, for we find the statute before us constitutionally infirm on other grounds.

II

The State has asserted in argument before this Court that the statute "has attempted to treat them [indigent defendants] the same as would any civil judgment debtor be treated in the State courts, . . ." [11] Again, in its brief the State asserts that "for all practical purposes the methods available for enforcement of the judgment are the same as those provided by the Code of Civil Procedure or any other civil judgment." [12] The challenged portion of the statute thrice alludes to means of debt recovery prescribed by the Kansas Code of Civil Procedure.[13]

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[10] See n. 2, *supra.*

[11] Transcript of Oral Argument, p. 9. The State concedes that exemptions for other civil judgment debtors are broader than for indigent defendants, a matter we will address forthwith. *Id.,* p. 10.

[12] Brief of Appellant, p. 7.

[13] See Kan. Stat. Ann. 1971 Supp. 60-701 to 60-724, 60-2401 to 60-2419.

Yet the ostensibly equal treatment of indigent defendants with other civil judgment debtors recedes sharply as one examines the statute more closely. The statute stipulates that save for the homestead, "none of the exemptions provided for in the code of civil procedure shall apply to any such judgment . . . ." [14] This provision strips from indigent defendants the array of protective exemptions Kansas has erected for other civil judgment debtors, including restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe personal or family sickness, and exemption from attachment and execution on a debtor's personal clothing, books and tools of trade. For the head of a family, the exemptions afforded other judgment debtors become more extensive, and cover furnishings, food, fuel and clothing, means of transportation, pension funds, and even a family burial plot or crypt.[15]

Of the above exemptions, none is more important to a debtor than the exemption of his wages from unrestricted garnishment. The debtor's wages are his sustenance, with which he supports himself and his family. The average low income wage earner spends nearly nine-tenths of those wages for items of immediate consumption.[16] This Court has recognized the potential of certain garnishment proceedings to "impose tremendous hardships on wage earners with families to support." *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337, 340 (1969).[17] Kansas has likewise perceived the burden to

[14] The exemptions in the civil code are set forth in Kan. Stat. Ann. 1971 Supp. 60-2301 to 60-2311.

[15] Kan. Stat. Ann. 1971 Supp. 60-2304 and 60-2308.

[16] Bureau of Labor Statistics, Handbook of Labor Statistics 281 (1968). Low-wage earners are defined as families with after-tax income of less than $5,000.

[17] The Court in *Sniadach* held that Wisconsin's prejudgment wage garnishment procedure, as a taking of property without notice

a debtor and his family when wages may be subject to wholesale garnishment. Consequently, under its code of civil procedure, the maximum which can be garnisheed is the lesser of 25% of a debtor's weekly disposable earnings or the amount by which those earnings exceed 30 times the federal minimum hourly wage. No one creditor may issue more than one garnishment during any one month, and no employer may discharge an employee because his earnings have been garnisheed for a single indebtedness.[18] For Kansas to deny protections such as these to the once criminally accused is to risk denying him the means needed to keep himself and his family afloat.

The indigent's predicament under this statute comes into sharper focus when compared with that of one who has hired counsel in his defense. Should the latter prove unable to pay and a judgment be obtained against him, his obligation would become enforceable under the relevant provisions of the Kansas Code of Civil Procedure. But, unlike the indigent under the recoupment statute, the code's exemptions would protect this judgment debtor.

It may be argued that an indigent accused, for whom the State has provided counsel, is in a different class with respect to collection of his indebtedness than a

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and prior hearing, violated the Due Process Clause of the Fourteenth Amendment.

[18] Kan. Stat. Ann. 1971 Supp. 60-2310 (b) and 60-2311. Section 60-2310 also provides further debtor protection from wage garnishment at a time of disabling personal sickness and from professional collecting agencies. See Kan. Stat. Ann. 1971 Supp. 60-2310 (c) and (d). See also Bennett, The 1970 Kansas Legislature in Review, 39 J. B. A. K. 107, 178 (1970), which points out that the State's restrictions on garnishments have been made to conform to Tit. III of the federal Consumer Credit Protection Act, 82 Stat. 163. Kansas, however, provided significant wage exemptions from garnishment long before the federal act was passed.

judgment creditor whose obligation arose from a private transaction. But other Kansas statutes providing for recoupment of public assistance to indigents do not include the severe provisions imposed on indigent defendants in this case. Kansas has enacted, as have many other States, laws for state recovery of public welfare assistance when paid to an ineligible recipient.[19] Yet the Kansas welfare recipient, unlike the indigent defendant, is not denied the customary exemptions.[20]

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[19] Kan. Stat. Ann. 1971 Supp. 39-719b; 59-2006. Section 39-719b deals mainly with the recovery of assistance from an ineligible recipient. Yet even when the welfare recipient is deemed to have defrauded the State, he still escapes the immediate interest accumulations and denied of exemptions imposed on indigent defendants:

"39-719b. Duty of recipient to report changes; action by board; recovery of assistance obtained by ineligible recipient. If at any time during the continuance of assistance to any person, the recipient thereof becomes possessed of any property or income in excess of the amount ascertained at the time of granting assistance, it shall be the duty of the recipient to notify the county board of social welfare immediately of the receipt or possession of such property or income and said county board may, after investigation, cancel the assistance in accordance with the circumstances.

"Any assistance paid shall be recoverable by the county board as a debt due to the state and the county in proportion to the amount of the assistance paid by each, respectively: If during the life or on the death of any person receiving assistance, it is found that the recipient was possessed of income or property in excess of the amount reported or ascertained at the time of granting assistance, and if it be shown that such assistance was obtained by an ineligible recipient, the total amount of the assistance may be recovered by the state department of social welfare as a fourth class claim from the estate of the recipient or in an action brought against the recipient while living. [L. 1953, c. 224, § 2; June 30.]"

[20] There appears to be a further discrimination against the indigent defendant as contrasted with the delinquent welfare recipient. The recoupment statute applicable to indigent defendants provides for the accumulation of 6% annual interest from the date expenditures are made for counsel or other legal defense costs. Kan. Stat. Ann. 1971 Supp. 22-4513. The interest build-up for the indigent

We recognize, of course, that the State's claim to reimburse may take precedence, under appropriate circumstances, over the claims of private creditors and that enforcement procedures with respect to judgments need not be identical.[21] This does not mean, however, that a State may impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor. The State itself in the statute before us analogizes the judgment lien against the indigent defendant to other "judgments under the code of civil procedure." But the statute then strips the indigent defendant of the very exemptions designed primarily to benefit debtors of low and marginal incomes.

The Kansas statute provides for recoupment whether the indigent defendant is acquitted or found guilty. If

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defendant would not be insubstantial. In the five years before the judgment became dormant, interest accumulations could lift appellee's $500 debt to almost $670. If the dormant judgment is revived within the statutorily prescribed two years, the principal and interest might total over $750. (The interest presumably would run while the judgment was dormant since "a dormant judgment may be revised and have the same force and effect as if it had not become dormant . . . ." Kan. Stat. Ann. 1971 Supp. 60-2404.)

Kansas also has a statute providing that all judgments shall bear 8% interest from the day on which they are rendered. Kan. Stat. Ann. 1971 Supp. 16-204 (recently amended from 6%). Presumably this statute would cover the "debts" of welfare recipients once they are reduced to judgment. The debt of the indigent defendant, however, runs from the date the assistance is granted, while any interest on the debt of a welfare recipient would presumbly run from the date of judgment.

[21] For example, Kansas does not extend its exemptions with respect to wage garnishment to any debt due for any state or federal tax, Kan. Stat. Ann. 1971 Supp. 60-2310 (c)(3). This type of public debt, however, differs from the instant case in representing a wrongful withholding from the State of a tax on assets in the actual possession of the taxpayer and not, as here, a debt contracted under circumstances of indigency.

acquitted, the indigent finds himself obligated to repay the State for a service the need for which resulted from the State's prosecution. It is difficult to see why such a defendant, adjudged to be innocent of the State's charge, should be denied basic exemptions accorded all other judgment debtors. The indigent defendant who is found guilty is uniquely disadvanted in terms of the practical operation of the statute. A criminal conviction usually limits employment opportunities. This is especially true where a prison sentence has been served. It is in the interest of society and the State that such a defendant, upon satisfaction of the criminal penalties imposed, be afforded a reasonable opportunity of employment, rehabilitation and return to useful citizenship. There is limited incentive to seek legitimate employment when, after serving a sentence during which interest has accumulated on the indebtedness for legal services, the indigent knows that his wages will be garnisheed without the benefit of any of the customary exemptions.

Appellee in this case has now married, works for a modest wage, and has recently become a father. To deprive him of all protection of his wages and intimate personalty discourages the search for self-sufficiency which might make of the criminally accused a contributing citizen. Not only does this treatment not accord with the treatment of indigent recipients of public welfare or with that of other civil judgment debtors,[22] but the Kansas statute also appears to be alone among recoupment laws applicable to indigent defendants in

[22] The statutes of various other States, *e. g.*, Alaska, South Carolina, and West Virginia, provide, as does Kansas, for recovery against indigent defendants in the same manner as on other judgments. Unlike Kansas, however, these States do not expressly subject indigents to conditions to which other civil judgment debtors are not liable. See n. 8, *supra*, for citations.

expressly denying them the benefit of basic debtor exemptions.[23]

III

In *Rinaldi* v. *Yaeger,* 384 U. S. 305 (1966), the Court considered a situation comparable in some respects to the case at hand. *Rinaldi* involved a New Jersey statute which required only those indigent defendants who were sentenced to confinement in state institutions to reimburse the State the costs of a transcript on appeal. In *Rinaldi,* as here, a broad ground of decision was urged, namely, that the statute unduly burdened an indigent's right to appeal. The Court found, however, a different basis for decision, holding that "to fasten a financial burden only upon those unsuccessful appellants who are confined in state institutions . . . is to make an invidious discrimination" in violation of the Equal Protection Clause. *Id.,* at 309.

Rinaldi affirmed that the Equal Protection Clause "imposes a requirement of some rationality in the nature of the class singled out." *Id.,* at 308–309. This requirement is lacking where, as in the instant case, the State has subjected indigent defendants to such discriminatory conditions of repayment. This case, to be sure, differs from *Rinaldi* in that here all indigent defendants are treated alike. But to impose these harsh conditions on a class of debtors who were provided counsel as required by the Constitution is to practice, no less than in *Rinaldi,* a discrimination which the Equal Protection Clause proscribes.

The Court assumed in *Rinaldi, arguendo* "that a legislature could validly provide for replenishing a county treasury from the pockets of those who have directly benefitted from county expenditures." *Id.,* at 309. We note here also that the state interests represented by

[23] See n. 8, *supra,* for citations.

recoupment laws may prove important ones. Recoupment proceedings may protect the State from fraudulent concealment of assets and false assertions of indigency. Many States, moreover, face expanding criminal dockets, and this Court has required appointed counsel for indigents in widening classes of cases[24] and stages of prosecution.[25] Such trends have heightened the burden on public revenues, and recoupment laws reflect legislative efforts to recover some of the added costs. Finally, federal dominance of the Nation's major revenue sources has encouraged State and local governments to seek new methods of conserving public funds, not only through the recoupment of indigents' counsel fees but of other forms of public assistance as well.

We thus recognize that state recoupment statutes may betoken legitimate state interests. But these interests are not thwarted by requiring more even treatment of indigent criminal defendants with other classes of debtors to whom the statute itself repeatedly makes reference. State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self sufficiency and self respect. The statute before us embodies elements of punitiveness and discrimination which violate the rights of citizens to equal treatment under the law.

The judgment of the court below is affirmed.

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[24] *Gideon* v. *Wainwright, supra; Douglas* v. *California, supra; Argersinger* v. *Hamlin,* — U. S. — (1972).

[25] *Coleman* v. *Alabama,* 399 U. S. 1 (1970); *Mempa* v. *Rhay,* 389 U. S. 128 (1967); *United States* v. *Wade,* 388 U. S. 218 (1967); *Miranda* v. *Arizona,* 384 U. S. 436 (1966).

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JAMES, JUDICIAL ADMINISTRATOR, ET AL. *v.* STRANGE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

No. 71-11. Argued March 22, 1972—Decided June 12, 1972

Kansas recoupment statute enabling State to recover in subsequent civil proceedings legal defense fees for indigent defendants, invalidated by District Court as an infringement on the right to counsel, *held* to violate the Equal Protection Clause in that, by virtue of the statute, indigent defendants are deprived of the array of protective exemptions Kansas has erected for other civil judgment debtors. Pp. 2-14.

323 F. Supp. 1230, affirmed.

POWELL, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 71–11

James R. James, Judicial Administrator, et al., Appellants, *v.* David E. Strange.

On Appeal from the United States District Court for the District of Kansas.

[June 12, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a constitutional challenge to a Kansas recoupment statute, whereby the State may recover in subsequent civil proceedings counsel and other legal defense fees expended for the benefit of indigent defendants. The three-judge court below held the statute unconstitutional, finding it to be an impermissible burden upon the right to counsel established in *Gideon* v. *Wainwright*, 372 U. S. 335 (1963).[1] The State appealed and we noted jurisdiction, — U. S. —.

The relevant facts are not disputed. Appellee Strange was arrested and charged with first-degree robbery under Kansas law. He appeared before a magistrate, professed indigency, and accepted appointed counsel under the Kansas Aid to Indigent Defendants Act.[2] Appellee was then tried in the Shawnee County District Court on the reduced charge of pocket picking. He pled guilty and received a suspended sentence and three years probation.

[1] The opinion of the three-judge court is reported in 323 F. Supp. 1230 (Kan. 1971).

[2] Kan. Stat. Ann. 1971 Supp. 22–4501 to 22–4515.

Thereafter, appellee's counsel applied to the State for payment for his services and received $500 from the Aid to Indigent Defendants Fund. Pursuant to Kansas' recoupment statute, the Kansas Judicial Administrator requested appellee to reimburse the State within 60 days or a judgment for the $500 would be docketed against him. Appellee contends this procedure violates his constitutional rights.

I

It is necessary at the outset to explain the terms and operation of the challenged statute.[3] When the State

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"(a) Whenever any expenditure has been made from the aid to indigent defendants fund to provide counsel and other defense services to any defendant, as authorized by section 10, such defendant shall be liable to the state of Kansas for a sum equal to such expenditure, and such sum may be recovered from the defendant by the state of Kansas for the benefit of the fund to aid indigent defendants. Within thirty (30) days after such expenditure, the judicial administrator shall send a notice by certified mail to the person on whose behalf such expenditure was made, which notice shall state the amount of the expenditure and shall demand that the defendant pay said sum to the state of Kansas for the benefit of the fund to aid indigent defendants within sixty (60) days after receipt of such notice. The notice shall state that such sum became due on the date of the expenditure and the sum demanded will bear interest at six percent (6%) per annum from the due date until paid. Failure to receive any such notice shall not relieve the person to whom it is addressed from the payment of the sum claimed and any interest due thereon.

"Should the sum demanded remain unpaid at the expiration of sixty (60) days after mailing the notice, the judicial administrator shall certify an abstract of the total amount of the unpaid demand and interest thereon to the clerk of the district court of the county in which counsel was appointed or the expenditure authorized by the court, and such clerk shall enter the total amount thereof on his judgment docket and said total amount, together with the inter-

provides indigent defendants with counsel or other legal services, the defendant becomes obligated to the State for the amount expended in his behalf. Within 30 days

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est thereon at the rate of six percent (6%) per annum, from the date of the expenditure thereof until paid, shall become a judgment in the same manner and to the same extent as any other judgment under the code of civil procedure and shall become a lien on real estate from and after the time of filing thereof. A transcript of said judgment may be filed in another county and become a lien upon real estate, located in such county, in the same manner as is provided in case of other judgments. Execution, garnishment, or other proceedings in aid of execution may issue within the county, or to any other county, on said judgment in like manner as on judgments under the code of civil procedure. None of the exemptions provided for in the code of civil procedure shall apply to any such judgment, but no such judgment shall be levied against a homestead. If execution shall not be sued out within five (5) years from the date of the entry of any such judgment, or if five (5) years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant and shall cease to operate as a lien on real estate of the judgment debtor. Such dormant judgment may be revived in like manner as dormant judgments under the code of civil procedure.

"(b) Whenever any expenditure has been made from the aid to indigent defendants fund to provide counsel and other defense services to any defendant, as authorized by section 10, a sum equal to such expenditure may be recovered by the state of Kansas for the benefit of the aid to indigent defendants fund from any persons to whom the indigent defendant shall have transferred any of his property without adequate monetary consideration after the commission of the alleged crime, to the extent of the value of such transfer, and such persons are hereby made liable to reimburse the state of Kansas for such expenditures with interest at six percent (6%) per annum. Any action to recover judgment for such expenditures shall be prosecuted by the attorney general, who may require the assistance of the county attorney of the county in which the action is to be filed, and such action shall be governed by the provisions of the code of civil procedure relating to actions for the recovery of money. No action shall be brought against any person

of the expenditure, defendants are notified of their debt and given 60 days to repay it.[4] If the sum remains unpaid after the 60-day period, a judgment is docketed against defendant for the unpaid amount. Six percent annual interest runs on the debt from the date the expenditure was made. The debt becomes a lien on the real estate of defendant and may be executed by garnishment or in any other manner provided by the Kansas Code of Civil Procedure. The indigent defendant is not, however, accorded any of the exemptions provided by that code for other judgment debtors except the homestead exemption. If the judgment is not executed within five years, it becomes dormant, ceases to operate as a lien on the debtor's real estate, but may be revived in the same manner as other dormant judgments under the code of civil procedure.[5]

Several features of this procedure merit mention. The entire program is administered by the judicial administrator, a public official, but appointed counsel are private practitioners. The statute apparently leaves to administrative discretion whether, and under what circumstances, enforcement of the judgment will be sought. Recovered sums do, however, revert to the Aid to Indigent Defendants Fund.

The Kansas statute is but one of many state recoupment laws applicable to counsel fees and expendi-

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under the provisions of this section to recover for sums expended on behalf of an indigent defendant, unless such action shall have been filed within two (2) years after the date of the expenditure from the fund to aid indigent defendants."

[4] Failure to receive notice, however, does not relieve the person to whom it is addressed of the obligation.

[5] A dormant judgment may be revived within two years of the date on which the judgment became dormant. Kan. Stat. Ann. 1971 Supp. 60-2404.

tures paid for indigent defendants.[6] The statutes vary widely in their terms. Under some statutes, the indigent's liability is to the county in which he is tried; in others to the State. Alabama and Indiana make assessment and recovery of an indigent's counsel fees discretionary with the court. Florida's recoupment law has no statute of limitations and the State is deemed to have a perpetual lien against the defendant's real and personal property and estate.[7] Idaho, on the other hand, has a five-year statute of limitations on the recovery of an "indigent's" concealed assets at the time of trial and a three-year statute for the recovery of later acquired ones. In Virginia and West Virginia, the amount paid to court appointed counsel is assessed only against convicted defendants as part of costs, while Oregon's recoupment statute expresly applies "whether or not a trial is had and whether or not the individual prevails." The same Oregon statute assesses costs against defendant on a formula prescribed by the Public Defender Committee while North Dakota sets

[6] There is also a federal reimbursement provision, 18 U. S. C. § 3006A (f):

"Receipt of other payments.—Whenever the United States magistrate or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant."

[7] The board of county commissioners has discretion to compromise or release the lien, however. Fla. Stat. Ann. § 27.56 (1971 Supp.).

counsel fees "at a reasonable rate to be determined by the court." It is thus readily apparent that state reimbursement laws and procedures differ significantly in their particulars.[8] Given the wide differences in the features of these statutes, any broadside pronouncement on their general validity would be inappropriate.

We turn therefore to the Kansas statute, aware that our reviewing function is a limited one. We do not inquire whether this statute is wise, or desirable, or "whether it is based on assumptions scientifically substantiated." *Roth* v. *United States*, 354 U. S. 476, 501 (1957) (Harlan, J., concurring). Misguided laws may nonetheless be constitutional. It has been noted both in the briefs and at argument that only $17,000 has been recovered under the statute in its almost two years of operation, and that this amount is negligible compared to the total expended.[9] Our task, however, is not to weigh this statute's effectiveness but its constitutionality. Whether the returns under the statute justify the expense, time, and efforts of state officials is for the ongoing supervision of the legislative branch.

The court below invalidated this statute on the grounds that "it needlessly encourages indigents to do without counsel and consequently infringes on the right to coun-

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[8] State recoupment statutes, including those quoted above, are as follows:

"Ala. Code, Tit. 17, § 315 (12) (1969 Supp.); Alaska Stat. Ann. 1962 § 12.55-030; Fla. Stat. Ann. § 27.56 (1971 Supp.); Idaho Code Ann. § 19-858 (1971 Supp.); Ind. Ann. Stat. 1956, 9-3501 (1971 Supp); Iowa Code Ann. § 775.5 (1971 Supp.); Md. Code 1966, Art. 26 § 9; N. D. C. C., § 29-07-01.1; N. M. Stat. Ann., 1953, § 41-22-7; Ohio R. C. § 2941-51 (1970 Supp.); Ore. Rev. Stat. § 137.205; S. C. Code 1962, § 17-283 (1971 Supp.); 2 Tex. C. C. P., Art. 26.05 §§ 3, 5; Tex. C. C. P., Art. 1018; Va. Code Ann. § 14.1-184 (1971 Supp.); W. Va. Code Ann. (1965) § 6190; 29 Wis. Stat. Ann. § 256.66."

[9] For fiscal 1971 $400,000 was appropriated to fund the program.

sel as explicated in *Gideon* v. *Wainwright, supra.*" 322 F. Supp., at —. In *Gideon*, counsel had been denied an indigent defendant charged with a felony because his was not a capital case. This Court often has voided state statutes and practices which denied to accused indigents the means to present effective defenses in courts of law. *Douglas* v. *California*, 372 U. S. 353 (1963); *Draper* v. *Washington*, 372 U. S. 487 (1963); *Lane* v. *Brown*, 372 U. S. 477 (1963); *Griffin* v. *Illinois*, 351 U. S. 12 (1956). Here, however, Kansas has enacted laws both to provide and compensate from public funds counsel for the indigent.[10] There is certainly no denial of the right to counsel in the strictest sense. Whether the statutory obligations for repayment impermissibly deter the exercise of this right is a question we need not reach, for we find the statute before us constitutionally infirm on other grounds.

II

The State has asserted in argument before this Court that the statute "has attempted to treat them [indigent defendants] the same as would any civil judgment debtor be treated in the State courts, . . ."[11] Again, in its brief the State asserts that "for all practical purposes the methods available for enforcement of the judgment are the same as those provided by the Code of Civil Procedure or any other civil judgment."[12] The challenged portion of the statute thrice alludes to means of debt recovery prescribed by the Kansas Code of Civil Procedure.[13]

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[10] See n. 2, *supra.*

[11] Transcript of Oral Argument, p. 9. The State concedes that exemptions for other civil judgment debtors are broader than for indigent defendants, a matter we will address forthwith. *Id.*, p. 10.

[12] Brief of Appellant, p. 7.

[13] See Kan. Stat. Ann. 1971 Supp. 60-701 to 60-724, 60-2401 to 60-2419.

Yet the ostensibly equal treatment of indigent defendants with other civil judgment debtors recedes sharply as one examines the statute more closely. The statute stipulates that save for the homestead, "none of the exemptions provided for in the code of civil procedure shall apply to any such judgment . . . ."[14] This provision strips from indigent defendants the array of protective exemptions Kansas has erected for other civil judgment debtors, including restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe personal or family sickness, and exemption from attachment and execution on a debtor's personal clothing, books and tools of trade. For the head of a family, the exemptions afforded other judgment debtors become more extensive, and cover furnishings, food, fuel and clothing, means of transportation, pension funds, and even a family burial plot or crypt.[15]

Of the above exemptions, none is more important to a debtor than the exemption of his wages from unrestricted garnishment. The debtor's wages are his sustenance, with which he supports himself and his family. The average low income wage earner spends nearly nine-tenths of those wages for items of immediate consumption.[16] This Court has recognized the potential of certain garnishment proceedings to "impose tremendous hardships on wage earners with families to support." *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337, 340 (1969).[17] Kansas has likewise perceived the burden to

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[14] The exemptions in the civil code are set forth in Kan. Stat. Ann. 1971 Supp. 60-2301 to 60-2311.

[15] Kan. Stat. Ann. 1971 Supp. 60-2304 and 60-2308.

[16] Bureau of Labor Statistics, Handbook of Labor Statistics 281 (1968). Low-wage earners are defined as families with after-tax income of less than $5,000.

[17] The Court in *Sniadach* held that Wisconsin's prejudgment wage garnishment procedure, as a taking of property without notice

a debtor and his family when wages may be subject to wholesale garnishment. Consequently, under its code of civil procedure, the maximum which can be garnisheed is the lesser of 25% of a debtor's weekly disposable earnings or the amount by which those earnings exceed 30 times the federal minimum hourly wage. No one creditor may issue more than one garnishment during any one month, and no employer may discharge an employee because his earnings have been garnisheed for a single indebtedness.[18] For Kansas to deny protections such as these to the once criminally accused is to risk denying him the means needed to keep himself and his family afloat.

The indigent's predicament under this statute comes into sharper focus when compared with that of one who has hired counsel in his defense. Should the latter prove unable to pay and a judgment be obtained against him, his obligation would become enforceable under the relevant provisions of the Kansas Code of Civil Procedure. But, unlike the indigent under the recoupment statute, the code's exemptions would protect this judgment debtor.

It may be argued that an indigent accused, for whom the State has provided counsel, is in a different class with respect to collection of his indebtedness than a

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and prior hearing, violated the Due Process Clause of the Fourteenth Amendment.

[18] Kan. Stat. Ann. 1971 Supp. 60-2310 (b) and 60-2311. Section 60-2310 also provides further debtor protection from wage garnishment at a time of disabling personal sickness and from professional collecting agencies. See Kan. Stat. Ann. 1971 Supp. 60-2310 (c) and (d). See also Bennett, The 1970 Kansas Legislature in Review, 39 J. B. A. K. 107, 178 (1970), which points out that the State's restrictions on garnishments have been made to conform to Tit. III of the federal Consumer Credit Protection Act, 82 Stat. 163. Kansas, however, provided significant wage exemptions from garnishment long before the federal act was passed.

judgment creditor whose obligation arose from a private transaction. But other Kansas statutes providing for recoupment of public assistance to indigents do not include the severe provisions imposed on indigent defendants in this case. Kansas has enacted, as have many other States, laws for state recovery of public welfare assistance when paid to an ineligible recipient.[19] Yet the Kansas welfare recipient, unlike the indigent defendant, is not denied the customary exemptions.[20]

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[19] Kan. Stat. Ann. 1971 Supp. 39-719b; 59-2006. Section 39-719b deals mainly with the recovery of assistance from an ineligible recipient. Yet even when the welfare recipient is deemed to have defrauded the State, he still escapes the immediate interest accumulations and denial of exemptions imposed on indigent defendants:

"39-719b. Duty of recipient to report changes; action by board; recovery of assistance obtained by ineligible recipient. If at any time during the continuance of assistance to any person, the recipient thereof becomes possessed of any property or income in excess of the amount ascertained at the time of granting assistance, it shall be the duty of the recipient to notify the county board of social welfare immediately of the receipt or possession of such property or income and said county board may, after investigation, cancel the assistance in accordance with the circumstances.

"Any assistance paid shall be recoverable by the county board as a debt due to the state and the county in proportion to the amount of the assistance paid by each, respectively: If during the life or on the death of any person receiving assistance, it is found that the recipient was possessed of income or property in excess of the amount reported or ascertained at the time of granting assistance, and if it be shown that such assistance was obtained by an ineligible recipient, the total amount of the assistance may be recovered by the state department of social welfare as a fourth class claim from the estate of the recipient or in an action brought against the recipient while living. [L. 1953, c. 224, § 2; June 30.]"

[20] There appears to be a further discrimination against the indigent defendant as contrasted with the delinquent welfare recipient. The recoupment statute applicable to indigent defendants provides for the accumulation of 6% annual interest from the date expenditures are made for counsel or other legal defense costs. Kan. Stat. Ann. 1971 Supp. 22-4513. The interest build-up for the indigent

We recognize, of course, that the State's claim to reimburse may take precedence, under appropriate circumstances, over the claims of private creditors and that enforcement procedures with respect to judgments need not be identical.[21] This does not mean, however, that a State may impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor. The State itself in the statute before us analogizes the judgment lien against the indigent defendant to other "judgments under the code of civil procedure." But the statute then strips the indigent defendant of the very exemptions designed primarily to benefit debtors of low and marginal incomes.

The Kansas statute provides for recoupment whether the indigent defendant is acquitted or found guilty. If

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defendant would not be insubstantial. In the five years before the judgment became dormant, interest accumulations could lift appellee's $500 debt to almost $670. If the dormant judgment is revived within the statutorily prescribed two years, the principal and interest might total over $750. (The interest presumably would run while the judgment was dormant since "a dormant judgment may be revived and have the same force and effect as if it had not become dormant . . . ." Kan. Stat. Ann. 1971 Supp. 60-2404.)

Kansas also has a statute providing that all judgments shall bear 8% interest from the day on which they are rendered. Kan. Stat. Ann. 1971 Supp. 16-204 (recently amended from 6%). Presumably this statute would cover the "debts" of welfare recipients once they are reduced to judgment. The debt of the indigent defendant, however, runs from the date the assistance is granted, while any interest on the debt of a welfare recipient would presumbly run from the date of judgment.

[21] For example, Kansas does not extend its exemptions with respect to wage garnishment to any debt due for any state or federal tax, Kan. Stat. Ann. 1971 Supp. 60-2310 (e)(3). This type of public debt, however, differs from the instant case in representing a wrongful withholding from the State of a tax on assets in the actual possession of the taxpayer and not, as here, a debt contracted under circumstances of indigency.

acquitted, the indigent finds himself obligated to repay the State for a service the need for which resulted from the State's prosecution. It is difficult to see why such a defendant, adjudged to be innocent of the State's charge, should be denied basic exemptions accorded all other judgment debtors. The indigent defendant who is found guilty is uniquely disadvanted in terms of the practical operation of the statute. A criminal conviction usually limits employment opportunities. This is especially true where a prison sentence has been served. It is in the interest of society and the State that such a defendant, upon satisfaction of the criminal penalties imposed, be afforded a reasonable opportunity of employment, rehabilitation and return to useful citizenship. There is limited incentive to seek legitimate employment when, after serving a sentence during which interest has accumulated on the indebtedness for legal services, the indigent knows that his wages will be garnisheed without the benefit of any of the customary exemptions.

Appellee in this case has now married, works for a modest wage, and has recently become a father. To deprive him of all protection of his wages and intimate personalty discourages the search for self-sufficiency which might make of the criminally accused a contributing citizen. Not only does this treatment not accord with the treatment of indigent recipients of public welfare or with that of other civil judgment debtors,[22] but the Kansas statute also appears to be alone among recoupment laws applicable to indigent defendants in

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[22] The statutes of various other States, *e. g.*, Alaska, South Carolina, and West Virginia, provide, as does Kansas, for recovery against indigent defendants in the same manner as on other judgments. Unlike Kansas, however, these States do not expressly subject indigents to conditions to which other civil judgment debtors are not liable. See n. 8, *supra*, for citations.

expressly denying them the benefit of basic debtor exemptions.[23]

III

In *Rinaldi* v. *Yaeger*, 384 U. S. 305 (1966), the Court considered a situation comparable in some respects to the case at hand. *Rinaldi* involved a New Jersey statute which required only those indigent defendants who were sentenced to confinement in state institutions to reimburse the State the costs of a transcript on appeal. In *Rinaldi*, as here, a broad ground of decision was urged, namely, that the statute unduly burdened an indigent's right to appeal. The Court found, however, a different basis for decision, holding that "to fasten a financial burden only upon those unsuccessful appellants who are confined in state institutions . . . is to make an invidious discrimination" in violation of the Equal Protection Clause. *Id.*, at 309.

Rinaldi affirmed that the Equal Protection Clause "imposes a requirement of some rationality in the nature of the class singled out." *Id.*, at 308–309. This requirement is lacking where, as in the instant case, the State has subjected indigent defendants to such discriminatory conditions of repayment. This case, to be sure, differs from *Rinaldi* in that here all indigent defendants are treated alike. But to impose these harsh conditions on a class of debtors who were provided counsel as required by the Constitution is to practice, no less than in *Rinaldi*, a discrimination which the Equal Protection Clause proscribes.

The Court assumed in *Rinaldi*, *arguendo* "that a legislature could validly provide for replenishing a county treasury from the pockets of those who have directly benefitted from county expenditures." *Id.*, at 309. We note here also that the state interests represented by

[23] See n. 8, *supra*, for citations.

recoupment laws may prove important ones. Recoupment proceedings may protect the State from fraudulent concealment of assets and false assertions of indigency. Many States, moreover, face expanding criminal dockets, and this Court has required appointed counsel for indigents in widening classes of cases[24] and stages of prosecution.[25] Such trends have heightened the burden on public revenues, and recoupment laws reflect legislative efforts to recover some of the added costs. Finally, federal dominance of the Nation's major revenue sources has encouraged State and local governments to seek new methods of conserving public funds, not only through the recoupment of indigents' counsel fees but of other forms of public assistance as well.

We thus recognize that state recoupment statutes may betoken legitimate state interests. But these interests are not thwarted by requiring more even treatment of indigent criminal defendants with other classes of debtors to whom the statute itself repeatedly makes reference. State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self sufficiency and self respect. The statute before us embodies elements of punitiveness and discrimination which violate the rights of citizens to equal treatment under the law.

The judgment of the court below is affirmed.

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[24] *Gideon* v. *Wainwright*, *supra*; *Douglas* v. *California*, *supra*; *Argersinger* v. *Hamlin*, — U. S. — (1972).

[25] *Coleman* v. *Alabama*, 399 U. S. 1 (1970); *Mempa* v. *Rhay*, 389 U. S. 128 (1967); *United States* v. *Wade*, 388 U. S. 218 (1967); *Miranda* v. *Arizona*, 384 U. S. 436 (1966).

July17, 1972

Re: No. 71-11 James v. Strange

Dear Mr. Putzel:

Thank you so much for your thorough and thoughtful editorial suggestions. All are agreeable to me, but I do not believe we need the "for" on page 13.

Reference to the Oregon and North Dakota statutes on pages 5 and 6 of the text should be deleted. My revised text should now read:

> "In Virginia and West Virginia, the amount paid to court-appointed counsel is assessed only against convicted defendants as a part of costs, although the majority of state recoupment laws apply whether or not the defendant prevails. It is thus apparent that state recoupment laws and procedures . . ."

Your revised footnote 8 is thus appropriate.

Again, many thanks.

Sincerely,

Mr. Henry Putzel, jr.