AN ANALYSIS OF THE LEGAL FEASIBILITY OF IMPOSING OWNER LIABILITY FOR MOVING TRAFFIC VIOLATIONS

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16. Abstract

An analysis was made of the legal feasibility of a proposed owner-liability countermeasure. Under this countermeasure, a vehicle owner could be held civilly liable for speeding and other minor moving traffic violations committed by a driver using the vehicle with permission. The approach underlying the owner-liability countermeasure is similar to that used to enforce parking regulations.

Relevant constitutional provisions, legislation, and court decisions dealing with holding individuals responsible for the actions of others, were analyzed. Analysis of current law revealed that some forms of legislation imposing liability on owners of vehicles driven in violation of traffic laws likely would be upheld by courts as constitutional. To be upheld, however, owner-liability legislation could impose only small, civil penalties (similar to parking fines), but could not impose jail sentences, license suspensions, or violation points on owners. In addition, analysis of legislation in other areas of traffic law revealed that the proposed owner-liability countermeasure might encounter public opposition; if such opposition were to develop, it could influence legislative willingness to enact owner-liability legislation.

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1.0 INTRODUCTION

This is one of a series of volumes concerned with the legal feasibility of highway crash countermeasures. It is specifically concerned with imposing owner liability for traffic violations. Owner liability means that the registered vehicle owner will be held civilly responsible for the violation, if the vehicle was used with permission.

The principal use envisioned for owner liability would be to enforce the 55 mph National Maximum Speed Limit. Owner liability also could be used to enforce laws relating to traffic signals, turns, and lane changes, violations of which are both objectively determinable and readily observable. It is believed that owner liability would promote the enforcement of traffic laws in two ways. First, law-enforcement paraprofessionals and even electronic detection devices (1) could be used to identify offending vehicles (Miller and Deuser 1978, pp. 7-1--7-23). (Another volume in this series [(Ruschmann, Greyson, and Joscelyn 1979) deals in greater detail with existing and proposed speed-measurement devices.) Second, the possibility that owners would face penalties for any unlawful operation of their vehicles could make them more willing to discourage others from violating traffic laws.

The research and analysis leading to preparation of this volume were conducted by staff of the Policy Analysis Division of The University of Michigan Highway Safety Research Institute (HSRI) for the National Highway Traffic Safety Administration (NHTSA) under Contract Number DOT-HS-7-01536.

1.1 Purpose of Volume

The legal issues that might constrain the implementation of highway crash countermeasures--including the imposition of liability on vehicle owners--are rooted in basic aspects of the American legal system and often involve complex issues of U.S. constitutional law and U.S. Supreme

Court interpretations of that law. Thus, any discussion of legal issues and potential constraints they impose must deal with prevailing constitutional principles. However, to fully treat these issues is beyond the scope of this volume. It is not intended to provide legal advice. Rather, it is designed to be used by safety officials and highway safety planners as a guide that will permit them to identify problem areas in countermeasure program implementation. Once identified, these problem areas can be discussed with legal counsel.

Within this context, the purpose of this volume is to provide a brief but relatively comprehensive review of the potential legal constraints that might be encountered with respect to the owner-liability countermeasure. It is designed to: identify important legal issues; show how they might arise; estimate their significance as constraints on the imposition of liability on vehicle owners; suggest methods that may be used to resolve those constraints; and assess the overall legal feasibility of the owner-liability countermeasure.

1.2 Description of the Countermeasure

The owner-liability countermeasure is modeled after the modern approach to enforcing parking regulations. Owing to the significant public interest in maintaining clear streets and in promoting the orderly flow of traffic, restrictions of parking are viewed as necessary. Because it is a practical impossibility to enforce parking regulations by apprehending drivers of illegally parked vehicles, alternate enforcement procedures have been developed. Thus, police officers attach citations to the vehicles themselves (2), and the vehicle owner is required to respond to the citation, regardless of who parked the vehicle (3).

Some maintain the same exigencies (public interest and the need for wide enforcement) that apply to parking-regulation enforcement apply as well as to certain moving violations, especially to violations of the 55-mph speed limit. For that reason an enforcement approach directed at vehicle owners has been urged. In this section the concept of vicarious liability, used to enforce parking regulations, is first discussed. Treated next is the manner in which the proposed owner-liability countermeasure

would apply the parking-violation approach to the enforcement of other traffic laws.

1.2.1 The Concept of Vicarious Liability. The proposed owner-liability countermeasure uses a legal concept known as "vicarious liability," meaning that one person is held legally responsible on account of another's conduct (Prosser 1971, pp. 458-59; Perkins 1969, pp. 812-15; Sayre 1930, pp. 702-14). Vicarious liability is applied in many different areas of the law. For example, an employer can be held civilly liable for money damages for his employees' on-the-job actions that injure others (Prosser 1971, pp. 460-67). The so-called "vicarious party" (here the employer) thus would be required to pay the injured person.

While vicarious liability is common in civil cases--in which the vicarious party is required only to pay the victim a sum of money—it is much rarer for vicarious criminal liability to be imposed. Such liability is most frequently imposed in connection with such public-welfare legislation as liquor regulations (4), pure food and drug laws (5), and as mentioned above, parking regulations. With respect to automobiles, the most familiar type of vicarious liability—aside from owner liability for parking violations--takes the form of statutes that permit a vehicle owner to be sued as the result of injuries caused by a person who drove the vehicle with his permission (Prosser 1971, pp. 486-87).

1.2.2 Application of the Parking-Violation Enforcement Process to Other Traffic Laws. The owner-liability countermeasure discussed in this volume is based on the "pure" form of vicarious liability, under which the vehicle owner is held legally responsible if he in fact permitted the offending driver to use his vehicle. The only defenses available to the owner are: first, that no traffic violation was committed; second, the owned vehicle was not involved; and third, the vehicle was stolen or otherwise used without permission (6). The proposed owner-liability countermeasure, like parking regulations, envisions the assessment of civil monetary penalties only; the owner of the offending vehicle would pay a small fine and suffer no other sanctions, such as confinement to jail,

assessment of violation points, or the suspension of driving privileges (7).

Implementation of owner liability for moving traffic violations requires the passage of new legislation. At present, all states require that drivers be personally responsible for committing moving traffic offenses. A few states have passed statutes creating "prima facie" owner liability for certain moving violations (8). These statutes permit judges or juries to infer that the registered vehicle owner was in fact the offending driver; this in effect relieves the prosecution of the burden of proving, beyond a reasonable doubt, who the driver was. However, prima facie liability statutes only affect the owner's burden of producing evidence but do not abolish the requirement of personal responsibility; for that reason they will not be discussed in this volume. Therefore, the owner-liability countermeasure discussed in this volume is a proposal for new legislation. It is intended to supplement--but not replace--existing legislation that requires personal responsibility. In cases where a traffic offense is serious (9) or where the offender can be identified and apprehended, existing laws and enforcement procedures would continue to be used.

1.3 Content of Volume

The remainder of this volume is divided into two sections. Section 2.0 identifies and discusses the legal feasibility of proposed legislation imposing liability for moving traffic offenses on vehicle owners. Section 3.0 discusses the overall feasibility of implementing and enforcing the owner-liability countermeasure and presents recommendations concerning owner liability.

2.0 IDENTIFICATION AND DISCUSSION OF LEGAL ISSUES

This section discusses the legal issues that the proposed owner-liability countermeasure might face. Discussed first of all is the legality of holding one individual liable for another's conduct. Treated next is the range of penalties that legitimately may be imposed on a vicarious basis. Finally, the various means of enforcing this countermeasure—including the collection of penalties—are examined.

2.1 Due Process of Law and Vicarious Imposition of Punishment

Vicarious imposition of punishment must be consistent with due process of law (Perkins 1969, pp. 809-12) (10). Although due process does not require that a vicarious party personally engage in the forbidden conduct, it does require that the vicarious party have some "responsible relationship" to the actual wrongdoing, that is, some power to correct or prevent it (11). In the case of owner-driver relationships the owner's discretion as to who may use his vehicle has been held by most courts to create a relationship sufficiently "responsible" to satisfy due process of law, at least with respect to holding the vehicle owner vicariously (or prima facie) responsible for parking offenses (12). It should be noted, however, that some state courts have interpreted local parking regulations in such a way as to permit a vehicle owner to prove someone else was operating his vehicle (13), and several others have declared unconstitutional provisions in parking regulations that deprived an owner of the defense that he was not the violator (14). Those decisions appear to be based on state constitutional provisions; it appears that no provision of the U.S. Constitution prohibits imposing the type of vicarious civil liability contemplated by this countermeasure (15).

It should be pointed out, however, that there are some weaknesses in the analogy between traditional subjects of vicarious criminal liability (liquor and pure-food laws, parking regulations) and the proposed

owner-liability countermeasure. Specifically, in the selling of liquor or the production of food products, there is an employment relationship between the business proprietor (the vicarious party) and the bartender or warehouse employee (the actual wrongdoer). Thus, the proprietor has the power to dismiss employees who violate the law; by so doing he can curb their unlawful behavior. Such a relationship—and resulting "control"—does not exist between most vehicle owners and drivers, especially between spouses who share the use of a vehicle (16).

Nevertheless, prior court decisions dealing with vicarious liability in general have emphasized two factors: the severity of the penalties for violation; and the existence of a responsible relationship between the vicarious party and the actual wrongdoer. Measured by those standards, owner civil liability for moving traffic violations is not inconsistent with vicarious liability for unauthorized liquor sales, distribution of adulterated foods, or illegal parking.

Therefore, the relationship between a vehicle owner and a driver of that vehicle—at least with respect to minor violations—appears sufficiently close to permit the imposition of vicarious liability.

2.2 Types of Sanctions That May Be Vicariously Imposed

The existence of a responsible relationship between the owner and driver of a vehicle is a minimum condition for an owner-liability scheme to satisfy the requirement of due process. However, whether vicarious punishment is appropriate in a given case depends on the seriousness of the offense, which is chiefly determined by the penalties imposed on the offender.

The proposed countermeasure would create a civil offense comparable in seriousness to parking violations. A civil offense means that no moral stigma is attached to the violator and penalties imposed on violators are comparatively light (Perkins 1969, pp. 784-98).

It is clear that imprisoning a vicarious party is considered at least a very unsound practice by lower courts and legal commentators (LaFave and Scott 1972, pp. 224; Perkins 1969, p. 815; Sayre 1930, p. 717) (17). Recent cases upholding vicarious imposition of penalties upon owners of

illegally parked vehicles have cited the absence of imprisonment as an important factor in their decisions (18). While the U.S. Supreme Court has not specifically declared vicarious imprisonment to be unconstitutional, imprisonment is not a suggested sanction for the owner-liability countermeasure (19).

Eliminating imprisonment as a possible sanction does not guarantee that vicarious imposition of penalties will be upheld; all the consequences of being held liable must be considered. When the collateral consequences of liability approach the severity of a jail term or a criminal fine, due process of law might preclude their vicarious imposition. Two recent examples help illustrate this point.

In Oregon, recent legislation reclassified most traffic offenses—including the first offense of driving while intoxicated (DWI)--as "traffic infractions." Thus, first offense DWI was made punishable by a $1,000 maximum fine, but not by imprisonment or license suspension (20). However, subsequent DWI convictions continued to be punishable by both imprisonment and loss of license (21), and all DWI offenses continued to be dealt with using arrest and other "traditional" criminal procedures. Features of Oregon's "decriminalization" of traffic offenses included the elimination of rights to jury trial and appointed legal counsel, as well as the requirement of proof beyond a reasonable doubt (22). As applied to DWI offenses, the Oregon Supreme Court held these procedures unconstitutional in Brown v. Multnomah County District Court (23). The court considered the overall impact of a DWI conviction—including the social stigma, the possibility of jail and loss of license, and the retention of criminal procedures--to be equivalent to that which follows conviction of a crime; on that basis it reinstated the protections guaranteed in criminal trials.

Prideaux v. State, Department of Public Safety (24) involved a license suspension imposed for refusing to submit to a chemical test under Minnesota's implied-consent law (25). The driver in that case demanded to contact an attorney before deciding, and that demand was treated as a refusal. It was argued that the right to an attorney (guaranteed in criminal cases) did not apply, since the implied-consent procedure was

"civil." However, the Minnesota Supreme Court responded that the penalty for refusal, a six-month license suspension, had an impact as serious as that of imprisonment and a fine (26), and on that basis the court granted drivers a limited right to consult with an attorney.

The Brown and Prideaux cases demonstrate that the substance of the penalties imposed on violators, rather than the label attached to the violation, will determine whether a particular procedure violates due process. Thus, in cases where the vicarious imposition of parking fines was challenged as a violation of due process, several courts have, in upholding the owner-liability scheme, stressed that the only penalty involved was a small fine (27), and that responsible owners were not subject either to increased insurance rates or to possible licensing sanctions, nor were owners required to appear in court to respond to parking citations (28).

Thus, the proposed owner-liability countermeasure, which requires that owners of offending vehicles pay small monetary penalties, but which does not impose any collateral penalties (29), likely would be upheld as constitutional by most state courts.

2.3 Enforcement of the Vicarious-Liability Countermeasure

Although the proposed vicarious-liability countermeasure is likely to be upheld as constitutional in principle, the methods of enforcing this owner-liability countermeasure also must be legally feasible. Specifically, some valid means must be found which will assure that owners will pay penalties assessed against them.

Currently police departments impound vehicles owned by persons who fail to answer parking citations or fail to pay fines. This technique also could be used against vehicle owners who fail to pay penalties for moving violations under a vicarious-liability scheme. However, whether a vehicle is towed depends on the rather unlikely event of its being found by a police officer who knows that its owner has failed to pay outstanding citations; for that reason, towing would be an inferior enforcement technique.

Many states automatically suspend the licenses of those who fail to

answer moving-violation citations (30). Mandatory suspension, however, might be considered a collateral consequence of liability, which could undercut the legality of a vicarious-liability countermeasure. In addition, where the vehicle owner is not the offending driver, especially if the owner is a commercial enterprise or a lessor of vehicles, mandatory suspension would be an inappropriate sanction.

One effective collection mechanism would be to require the vehicle owner to pay all outstanding penalties as a condition of reregistering the vehicle for the following year. A vehicle without proper registration plates is more easily detectible than an unlicensed driver; moreover, tying payment of penalties to vehicle registration would assure a regular accounting for unanswered citations. It should be emphasized, however, that suspension of an individual's vehicle registration affects what the U.S. Supreme Court has characterized as an "important interest" and is therefore governed by the Due Process Clause of the Constitution (31). Moreover, the imposition of penalties is a deprivation of property and is likewise subject to due process limitations. Minimum due process safeguards include notice of the alleged violation and the opportunity to contest the allegations (32). A procedure similar to that used to deal with parking violations likely would satisfy due process requirements. As prointed out earlier, an owner can avoid liability only by disproving one of three elements: occurrence of the violation; involvement of the owned vehicle; and permissive use of the vehicle. It is likely that few owners will choose to challenge the validity of citations issued against them (33). Note, however, that most individuals charged with common traffic violations that are criminal in nature (such as speeding) plead guilty.

One variation on tying the payment of penalties to reregistration is imposing a lien, for the unpaid sum, on the owner's title; this would make payment of penalties a condition of transferring the vehicle. Such an approach would be an effective means of dealing with lessors and other commercial vehicle owners, but would be somewhat less effective when used against individuals, many of whom own vehicles until they are scrapped. Imposing a lien, like suspending a registration, affects a constitutionally recognized property interest; if the owner's vehicle is

seized on the basis of the lien, the seizure must conform to due process requirements (34).

Therefore, using a vehicle registration or lien strategy to enforce a vicarious-liability countermeasure would be legally feasible, provided procedural due process guarantees (notice and the opportunity to be heard) are respected (35). On the other hand, imposing such sanctions as mandatory license suspension or confinement to jail on those who fail to pay would infuse this countermeasure with too many aspects of a criminal procedure, and could lead to its being held unconstitutional.

2.4 Summary

Under current law, proposed use of vicarious civil liability as a means of enforcing moving traffic laws likely would, in most states, be considered a legally feasible enforcement strategy provided: sanctions are limited to small monetary penalties; no collateral penalties (with the possible exception of increased insurance rates) are imposed upon owners; and cited owners are afforded notice of alleged violations and given the opportunity to contest the allegations.

One particularly effective enforcement strategy would involve tying the owner's payment of penalties to the reregistration or transfer of his vehicle. If the sanctions for nonpayment do not include confinement to jail or loss of driving privileges, and if proper notice is given and an opportunity to be heard afforded, such a strategy would be legally feasible.

Thus, a vicarious-liability statute that incorporates the features listed above likely would not face serious legal constraints in most states. In those states the legal issues, therefore, reduce to those involved in passing and enforcing such legislation. These are likely to be very critical as the countermeasure concept is likely to be opposed by the same groups (such as fleet owners and commercial vehicle lessors) that have contested vicarious liability for parking violations in the past (35).

3.0 CONCLUSIONS AND RECOMMENDATIONS

Legislation holding a registered vehicle owner liable for moving traffic violations likely would be upheld as constitutional by most state courts, provided it contains the following provisions:

- Vehicle owners could be held vicariously liable only for nonserious moving violations such as speeding, that are committed using their vehicles. The driver's personal responsibility for more serious traffic offenses would continue to be necessary.
- Sanctions imposed on vehicle owners would be limited to small monetary penalties, and would not include such penalties as confinement to jail or assessment of violation points.
- Owners cited for violations involving their vehicles would be given notice of the alleged violation, and the opportunity to contest the allegations.
- Penalties would not be collected by imprisoning owners who fail to pay penalties, or by suspending the driving privileges of owners who refuse to pay.
- Existing laws that hold a driver responsible for committing a violation would be continued.

Then we conclude that under present law a vicarious-liability statute that contains the features listed above would, in most states, be a legally feasible means of enforcing the 55-mph speed limit and other moving traffic violations that are objectively determinable and readily observable.

Although the legislation outlined above likely would be constitutionally feasible, its public acceptability is presently uncertain. For example, a number of states have so far declined to assess violation points against drivers who violate the 55-mph limit (Darwick 1977, pp. 102, 108-109), some police departments have reported public hostility toward speed enforcement strategies (Darwick 1977, pp. 112-13) and the use of such enforcement tools as radar devices and unmarked patrol vehicles has been

restricted in some states by legislation or by official policy (Note 1974) (37).

If overwhelming public opposition to the proposed countermeasure developed, it would be likely to influence courts that consider the constitutionality of this countermeasure. Some courts might hold that the pure-food, liquor, and parking analogies do not apply to speeding and other moving violation cases. In addition to the possible judicial consequences, public opposition is likely to influence legislative willingness to enact an owner-liability statute in the first place. Therefore it is important that the public acceptability of this countermeasure be established in advance of any attempt to implement it.

FOOTNOTES

1. A device of particular importance to this proposed countermeasure is ORBIS III, an automatic photographing and recording system. This device is capable of detecting speed violations, producing a permanent record of the violation, and--most important--identifying the offending vehicle by photographing its registration plates (Glater 1973, pp. 2-4; Myers and Ottman undated; Vought Missiles and Space Company undated).

2. See, e.g., UNIFORM VEHICLE CODE § 16-212 (Supp. II 1976).

3. See, e.g., UNIFORM VEHICLE CODE §§ 16-212, 16-213, 16-214(a) (Supp. II 1976), which provide that notice of an unanswered citation be sent to the registered vehicle owner, and which--in a parking-violation prosecution—raises a "prima facie presumption" that the registered owner was the actual offender.

4. Commonwealth v. Koczwara, 397 Pa. 575, 155 A.2d 825 (1959), cert. denied, 363 U.S. 848 (1960).

5. United States v. Park, 421 U.S. 658 (1975).

6. See in this regard, City of Chicago v. Hertz Commercial Leasing Company, 71 Ill.2d 333, 375 N.E. 2d 1285, cert. denied, — U.S. —, 99 S.Ct. 315 (1978); see also, Iowa City v. Nolan, --- Iowa ---, 239 N.W.2d 102 (1976); Commonwealth v. Minicost Car Rental, Inc., 254 Mass. 746, 242 N.E.2d 411 (1968); and City of Kansas City v. Hertz Corporation, 499 S.W.2d 449 (Mo. 1973).

7. It is an open question whether owner's insurance rates could be increased as the result of violations committed by others who use his vehicle. Especially in states that have adopted "no-fault" insurance, vehicles--not individual drivers—are insured. Therefore, tying insurance rates to vicarious-liability violations could be considered reasonable. However, owing to the uncertain public acceptability of this countermeasure, proponents of owner liability may choose not to include increased insurance rates as a consequence of vicarious-liability violations.

8. CONN. GEN. STAT. ANN. § 14-107 (West Supp. 1979); MASS. ANN. LAWS ch. 90, § 2 (Michie/Law. Co-Op 1975); PA. STAT. ANN. tit. 75, § 6342 (Purdon 1977). A feature of the Pennsylvania provision, shifting the burden of proof to the owner and requiring him to testify in order to rebut the owner-driver inference, was declared unconstitutional in Commonwealth v. Slaybaugh, 468 Pa. 168, 364

A.2d 687 (1976).

The term "prima facie" means "at first impression" or "without more." Thus, prima facie liability allows a judge or jury to infer, from the fact that one is a registered vehicle owner, that he was the offending driver.

The use of prima facie liability, similar to the Connecticut approach, is another possible means of achieving greater owner accountability for moving violations and for increasing the level of enforcement against violators. While this approach has merit, it lies beyond the scope of this volume and therefore is not discussed.

9. The term "serious" traffic offenses normally includes vehicular homicide, leaving the scene of a traffic crash, reckless driving, and driving while intoxicated (DWI); in this regard see, e.g., FLA. STAT. § 318.17 (1978), which excludes the offenses listed above from the class of "decriminalized" traffic violations. "Excessive speeding," that is, exceeding the posted speed limit by a specified number of miles per hour, also might be regarded as serious; see, e.g., FLA. STAT. §§ 318.18(3), 318.19(3) (1978) [more than twenty-five miles per hour above posted limit; court appearance required]; and R.I. GEN. LAWS § 31-43-5.1 (Supp. 1978) [more than fifteen miles per hour above posted limit; punishable by mandatory license suspension].

10. U.S. CONST. amend. XIV.

11. See, United States v. Park, 421 U.S. 658, 676 (1975).

12. City of Chicago v. Hertz Commercial Leasing Company, 71 Ill.2d 333, 375 N.E.2d 1285, cert. denied, — U.S. —, 99 S. Ct. 315 (1978); Iowa City v. Nolan, --- Iowa ---, 239 N.W.2d 102 (1976); Commonwealth v. Minicost Car Rental, Inc., 354 Mass. 746, 242 N.E.2d 411 (1968); City of Kansas City v. Hertz Corporation, 499 S.W.2d 449 (Mo. 1973). See also, the following cases which upheld the validity of owner-driver inferences in moving-violation prosecutions: State v. DeBiaso, 6 Conn. Cir. Ct. 297, 271 A.2d 857 (App. Div. 1970); State v. Jordan, 5 Conn. Cir. Ct. 561, 258 A.2d 552 (App. Div. 1969); State v. Knudsen, 3 Conn. Cir. Ct. 458, 217 A.2d 236 (App. Div. 1965); Commonwealth v. Pauley, 368 Mass. 286, 331 N.E.2d 901 (1975); and State v. Kay, 151 N.J. Super. 255, 376 A.2d 975 (Mercer County Court 1977); but see, People v. Hildebrandt, 308 N.Y. 397, 126 N.E.2d 377 (1955); and State v. Scoggin, 236 N.C. 19, 72 S.E.2d 54 (1952).

13. See, e.g., People v. Bigman, 38 Cal. App. 2d 733, 100 P.2d 370 (1940); Commonwealth v. Kroger, 276 Ky. 20, 122 S.W.2d 1006 (1938); People v. Kayne, 283 Mich. 571, 282 N.W. 248 (1938); State v. Jetty, — Mont. —, 579 P.2d 1228 (1978); City of Portland v. Kirk, 16 Or. App. 329, 518 P.2d 665 (1974); and City of Seattle v. Stone, 67

Wash. 2d 886, 410 P.2d 583 (1966). See generally, Annot., 49 A.L.R. 2d 456 (1956).

14. State v. Jetty, — Mont. —, 579 P.2d 1228 (1978); City of Seattle v. Stone, 67 Wash. 2d 886, 410 P.2d 583 (1966).

15. The U.S. Supreme Court declined to review the Illinois Supreme Court's decision in City of Chicago v. Hertz Commercial Leasing Company, cited above. The Court's action did not amount to an explicit finding that Chicago's parking ordinances were constitutional. However, this together with the Court's decision in United States v. Park, 421 U.S. 658 (1975) [corporate officer convicted under pure-food statute on account of contamination in corporation's warehouse] and its decision not to review the Pennsylvania Supreme Court's decision in Commonwealth v. Koczwara, 397 Pa. 575, 155 A.2d 825 (1959) [liquor store owner convicted of liquor law violation on account of employee's sale to minors] indicate that imposing vicarious liability on owners of illegally parked vehicles is not an unconstitutional practice.

16. One approach might be to limit the owner-liability countermeasure to corporate owners (such as leasing companies, trucking firms, and bus lines) on the basis of those owners' ability to pay the penalties as well as their power to dismiss, deny rental privileges to, or collect penalties from, the offending drivers. Limiting the countermeasure in this manner would make it more analogous to the pure-food and liquor cases.

17. In Commonwealth v. Koczwara, 397 Pa. 575, 155 A.2d 858 (1959), cert. denied, 363 U.S. 848 (1960), the Pennsylvania Supreme Court upheld imposing a fine on the vicarious party but struck down his vicarious imprisonment.

18. Compare, Commonwealth v. Minicost Car Rental, Inc., 354 Mass. 746, 242 N.E.2d 411 (1968), and City of Kansas City v. Hertz Corporation, 499 S.W.2d 449 (Mo. 1973), with City of Portland v. Kirk, 16 Or. App. 329, 518 P.2d 665 (1974). Under the municipal ordinances considered in Kirk, parking violators could be confined to jail.

19. In United States v. Park, 421 U.S. 658 (1975), the vicarious party was sentenced to pay a small fine. However, the statute under which he was convicted provided for potential imprisonment of up to one year.

20. OR. REV. STAT. §§ 484.360(2)(a), 487.540 (1977).

21. OR. REV. STAT. §§ 484.365(1), 482.430(3) (1977).

22. OR. REV. STAT. §§ 484.375(1), 484.375(2), 484.390(1) (1977).

23. Brown v. Multnomah County District Court, 280 Or. 85, 570 P.2d 52 (1977).

24. Prideaux v. State, Department of Public Safety, 310 Minn. 405, 247 N.W.2d 385 (1976).

25. MINN. STAT. ANN. § 169.123 (West Supp. 1979).

26. Prideaux v. State, Department of Public Safety, 310 Minn. 405, 247 N.W.2d 385 (1976).

27. In Commonwealth v. Minicost Car Rental, Inc., 354 Mass. 746, 242 N.E.2d 411, 413 (1968) the court stated that a $20 fine was "very definitely minor" but expressed reservations about imposing a large number of vicarious penalties on the owner of only a few vehicles. In Brown v. Multnomah County District Court, 280 Or. 85, 570 P.2d 52, 58 (1977), the court characterized a $1,000 "civil penalty" as large enough to have "punitive significance"; however, Brown did not deal with the vicarious imposition of penalties.

28. City of Kansas City v. Hertz Corporation, 499 S.W.2d 449, 453 (Mo. 1973). However, the vicarious imposition of increased insurance premiums on vehicle owners might be permissible. See note 7 above.

29. In City of Kansas City v. Hertz Corporation, 499 S.W.2d 449, 453 (Mo. 1973), the Missouri Supreme Court, in upholding the lessor's vicarious liability for parking violations, stated in part:

> The maximum penalty is a relatively small fine and no potential incarceration. There is no public stigma attached to receiving a parking ticket and it has no effect upon one's driver's license or insurance cost. If the ticket is paid promptly, no court appearance is required.

See also, Commonwealth v. Minicost Car Rental, Inc., 354 Mass. 746, 242 N.E.2d 411 (1968); and Kinney Car Corporation v. City of New York, 58 Misc. 2d 365, 295 N.Y.S.2d 288 (Supp. Ct. 1968), affirmed, 34 A.D.2d 897, 310 N.Y.S. 2d 1001 (1969), affirmed mem., 28 N.Y.2d 741, 269 N.E.2d 829, 321 N.Y.S.2d 121 (1971); see generally, Morissette v. United States, 342 U.S. 256 (1952).

30. See, e.g., MICH. COMP. LAWS ANN. § 257.321a (1977).

31. The suspension or revocation of driving privileges has been characterized by the U.S. Supreme Court as a deprivation of an "important interest" and therefore must be carried out in a manner

consistent with due process of law. In this regard see, Bell v. Burson, 402 U.S. 535 (1971); see also, Dixon v. Love, 431 U.S. 105 (1977).

32. See, Bell v. Burson, 402 U.S. 535. 540-43 (1971); see generally, Goldberg v. Kelly, 397 U.S. 254 (1970); and Mullane v. Central Hanover Bank & Trust Company, 339 U.S. 306 (1950).

33. Common experience indicates that few vehicle owners who receive parking citations choose to contest them in court, even in states where the owner may avoid liability by showing that another person actually parked the vehicle. Instead, vehicle owners either pay the parking fine by mail (in effect admitting responsibility) or ignore the citation and risk the consequences.

    More specifically, a recent field test of the ORBIS III speed measuring device resulted in the issuance of 434 citations, 336 of which were paid without prosecution. The average fine paid by those who responded without prosecution was twenty dollars. (Dreyer and Hawkins 1979, p. 26).

34. See, North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975); and Fuentes v. Shevin, 407 U.S. 67 (1972); see also, Sniadach v. Family Finance Corporation, 395 U.S. 337 (1969).

35. See, e.g., City of Chicago v. Hertz Commercial Leasing Corporation, 71 Ill. 2d 333, 375 N.E.2d 1285 (1978), cert. denied, ---U.S.---, 99 S.Ct. 315 (1978); and Commonwealth v. Minicost Car Rental, Inc., 254 Mass. 746, 242 N.E.2d 411 (1968); and City of Kansas City v. Hertz Corporation, 499 S.W.2d 449 (Mo. 1973).

36. One possible constraint on enforcement strategies tied to vehicle registration or titling is that they could be ineffective when used against out-of-state violators. One possible resolution strategy might be an interstate arrangement similar to the Uniform Nonresident Violator Compact.

37. See, e.g., GA. CODE ANN. §§ 68-2101--68-2111 (Supp. 1978); ILL. ANN. STAT. ch. 95-1/2, § 11-602 (Smith-Hurd Supp. 1978); and MISS. CODE ANN. § 63-3-519 (1973) [restricting the places in and the circumstances under which radar devices may be used]; see also, e.g., OHIO REV. CODE ANN. § 4549.13 (Page 1973) [prohibiting police officers assigned to traffic-enforcement duties from using unmarked patrol vehicles].

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