FOR EDUCATIONAL PURPOSES ONLY

NO:_____

SUPREME COURT
OF THE STATE OF WASHINGTON

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PLAINTIFFS' OPENING BRIEF

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P L A I N T I F F S' B R I E F

QUESTIONS PRESENTED

1. Does the De Jure State citizen as distinguished from a defacto resident have the common right to travel upon the public highways, by the every day method of locomotion in the ordinary course of everyday life and pleasure?

2. Is the De Jure State citizen exercising a privilege when he/she uses his/her private property, in the ordinary course of traveling?

3. Can the State compel a De Jure citizen to be a witness against himself?

4. Can the Legislature arbitrarily deprive every De Jure State citizen of their Constitutionally protected right to travel, without affording the individual citizen an opportunity to defend the loss of such a right?

5. Does a license establish the status of non-citizen "resident" for taxing purpose?

6. Can the Legislature condition on the exercise of a Constitutional Right upon the surrendering of De Jure citizenship and procurement of a "license"?

7. Can the State tax a Constitutionally protected right?

8. Can the State refuse to acknowledge the status and citizenship of De Jure citizen?

9. Can the Legislature condition the granting of a "privilege" upon the citizen's surrender of a constitutional right?

10. Can the Legislature convert the claim and exercise of a constitutional right into a crime?

11. Does the Legislature acknowledge the De Jure State citizen's right to travel?

12. Can the De Jure State Citizen be forced to surrender one secure right in order to exercise another?

13. Can the De Jure State citizen be punished by fine or imprisonment for exercising a right?

P L A I N T I F F S' B R I E F

For many years, the legislatures of the several States have taken for granted, their power to "license" every thing the De Jure State citizen does, including using one's private property to travel upon the public highways for one's own convenience and pleasure.

However, America is at a crossroad and the citizens of America are no longer blindly accepting the unbridled power of the legislatures and are awakening to the horror of a government out of control.

The De Jure citizen of this State, of the Union of the United States of America have watched, in horror, as the legislative branch of government, has proceeded against the Rights of the Sovereign power. The common man has attempted to control this slow and constant drain of his Rights by diverse means, over the past few decades.

First, the citizens attempted to vote people into office who would represent the citizen's interest. However, it soon became clear that the elected legislator would only represent the "moneyed" interest. Next, the People attempted to "write" control over the legislatures by organizing letter writing campaigns designed to inform the legislator of the "People's displeasure" with the loss of Rights. However, the People soon found that they did not have the power to control the legislator in this way, as the "moneyed interest" could buy the legislator a re-election.

Now, the People turn to the common law Constitution Courts as a last resort. The above name Plaintiffs believe that if the Courts fail in their duty to protect WE THE PEOPLE from "steady encroachments" upon our Rights by our public servants, the People may rise up and "take up arms" as our Forefathers were forced to do in an effort to remain "free" of government oppression. The above-named Plaintiffs bring this Action in an attempt to PREVENT the need for such an "uprising."

Thomas Jefferson once said: "Bind down the government with the chains of the Constitution." For years, the citizens of America have been content to live their lives without much thought of "binding down their government with the chains of the Constitution." However, this era of time is behind us now, and WE THE PEOPLE have begun the long process of bringing our PUBLIC SERVANTS back under our control. The newly awakened De Jure State Citizens are determined to control his PUBLIC SERVANTS and to re-assert his RIGHTS under the United States Constitution and the Constitutions of the several States.

This newly awakened De Jure State Citizen is so determined to control his PUBLIC SERVANTS that he has taken the time to study Constitutional law. He has learned how to research the hidden secrets of America's early law books and he has learned how to PROPERLY apply this early law to today's facts.

Today's citizens no longer rely upon the lawyers and the lower Court judges to tell them what RIGHTS they do or do not have as they have been

lied to by these people many times. They have learned to KNOW what "freedom" means. "Freedom is only for the vigilant" and today's De Jure State Citizen is "vigilant." The case at bar is a result of such research and knowledge.

"A little knowledge is a dangerous thing ..."

Judge Charles Dorn --
Spokane Municipal Court (among others).

The Plaintiffs, before this Court, have researched the power of the legislature to condition the exercise of a Constitutional Right upon the procurement of a "license" and have found that the legislature does not have the power to prohibit the exercise of ANY right guaranteed by the State or federal Constitutions by licensing or any other form of prohibition, but it does have the power to regulate any 14th Amendment non-citizen "resident."

The Plaintiffs before this Court who are not of this status have further found that they have a constitutionally guaranteed RIGHT to use their private property upon the public highways in the usual and ordinary course of life and business. No longer will these Plaintiffs accept "punishment" for exercising a "privilege" when the so called "privilege" is, IN FACT, a "RIGHT."

> **".. all men are ... endowed by their Creator with certain UNALIENABLE RIGHTS, that among these are life, LIBERTY, and the pursuit of happiness. That to SECURE THESE RIGHTS, governments are instituted among men ... (emph. added)**
>
> **Declaration of Independence, July 4, 1776.**

Can these rights, which were gifts from our Creator, be taken away by the legislature? Can these rights become outmoded? Does any man have the power to "alienate" us from these God-given rights? If ever an American Justice understood the public's right to use the PUBLIC HIGHWAYS, it was Justice Tolman of the Washington State Supreme Court:

> **"Complete freedom of the highways is so old and WELL ESTABLISHED a blessing that we have forgotten the days of the robber barons and toll roads, and yet, under an act such as this, arbitrarily administered, the highways may become completely monopolized. If, through LACK OF INTEREST, the people submit, THEY MAY LOOK TO SEE THE MOST SACRED OF LIBERTIES TAKEN FROM THEM, ONE BY ONE, BY MORE OR LESS RAPID ENCROACHMENT." /[1] (emph. added)**
>
> **ROBERTSON v DEPARTMENT OF PUBLIC WORKS, 180 Wn 133, 147 (1934) Dissenting Op.**

S T E A L T H Y E N C R O A C H M E N T

> **"It is the duty of the courts to be watchful for the Constitutional Rights of the citizen, and AGAINST ANY STEALTHY ENCROACHMENT THEREON." (emph. mine)**
>
> **BOYD v US, 116 US 616 (1886).**

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[1]/ **NOTE ... Although this is a dissenting opinion, it is "on point" as Justice Tolman began his dissent with: "I am not particularly interested about the rights of haulers by contract, or otherwise, BUT I AM DEEPLY INTERESTED IN THE RIGHTS OF THE PUBLIC TO USE THE PUBLIC HIGHWAYS FREELY FOR ALL LAWFUL PURPOSES." ROBERTSON, supra at 139. The words of Justice Tolman ring prophetically in the ears of the citizens of every state, as today, the public highways have become completely monopolized by the very entity with WE THE PEOPLE have entrusted to protect our Right and stand guard over our freedoms.**

In order to protect our Republic and the sovereignty of the citizens of the United States, our Forefathers designed a form of divided government in which each division of this government could keep the other branches under control.

The subject matter of this action contains one of the most "STEALTHY encroachments" upon the citizens' Rights in the history of the United States.

Not one person has ever challenged the authority of the legislature to "require" a driver's license. In 1986, Julie Port challenged this "requirement" and Division III of the Washington State Court of Appeals completed the "steady encroachment" by declaring that the use of the public highways "is a qualified right ... a privilege." (CITY OF SPOKANE v Port,___ Wn App____, ____P.2d____[1986]).

This decision attempts to over rule previous decisions of the Washington State Supreme Court and places Division III "at odds" with the Supreme Court. This decision also places the Sovereign Citizen in jeopardy of losing ALL of his Constitutionally protected liberties through judicial construction (destruction) of Rights.

THEREFORE, Plaintiffs are forced to ask this Honorable Court to uphold

and defend the Constitutions and the Rights of the People.

L I B E R T Y

Justice Tolman referred to "the most sacred of liberties" in ROBERTSON, supra. What was this "most sacred of liberties" which he wrote about?

> **"Personal liberty, or the right to the enjoyment of life and liberty, is one of the fundamental and natural rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from, nor dependent on the U.S. Constitution, and may not be submitted to a vote, and may not depend upon the outcome of an election. IT IS ONE OF THE MOST SACRED AND VALUABLE RIGHTS ... and is regarded as inalienable."**
>
> **16 CJS, Const. L., Sec. 202 [Pg. 987].**

This concept is further amplified:

> **"Personal liberty largely consists of the right of locomotion -- to go where and when one pleases -- only so far restrained as the rights of others may make it necessary for the welfare of all other citizens.**
>
> **THE RIGHT OF THE CITIZEN TO TRAVEL UPON THE PUBLIC HIGHWAY AND TRANSPORT HIS PROPERTY THEREON, by horse -- drawn carriage, wagon, or AUTOMOBILE, IS NOT A MERE PRIVILEGE which may be permitted or prohibited at will, BUT A COMMON RIGHT which he has under the right to life, liberty and the pursuit of happiness. Under this constitutional guarantee one may, therefore, under normal conditions, travel at his inclination, along the public highways or in public places, and while conducting himself in an orderly manner, neither interfering with, nor disturbing another's rights, he will be protected, not only in his person, but in his safe**

conduct." (emph. added)

11 AM JUR (1st). Const. L., Sec. 329 (Page 1135).

And further ...

> **"Personal liberty -- consists in the power of locomotion, of changing situation, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint, unless by due course of law."**
>
> **1 Blackstone's Comm. 134;**
> **Hare -- Const. L. 777;**
> **Bouvier's Law Dict. (l914);**
> **Black's Law Dict. 5th Ed. (1983).**

Justice Tolman was concerned about the state prohibiting the citizens' "most sacred of liberties"-- the Right of movement -- the Right of moving one's self from place to place without threat of imprisonment -- the Right to use the public roads in the ordinary course of life and business.

> **"... based upon the fundamental ground that the sovereign state has plenary control of the streets and highways, and in the exercise of its police power, may absolutely prohibit the use of the streets as a place for the prosecution of a PRIVATE BUSINESS FOR GAIN. They all recognize the FUNDAMENTAL DISTINCTION between the ordinary RIGHT of the citizen TO USE THE STREETS IN THE USUAL WAY and the use of the streets as a place of business, or a main instrumentality of business, FOR PRIVATE GAIN. THE FORMER IS A COMMON RIGHT; the latter is an extraordinary use. As to the former, the LEGISLATIVE POWER IS CONFINED TO REGULATION; as to the latter, it is plenary and extends even to absolute carrier, in the prosecution of its business, as such, is not a right BUT A MERE LICENSE OR PRIVILEGE." (emph. added).**

HADFIELD v LUNDIN, 98 W. 657, 168 P. 516. /[2]

What "distinction" was Justice Tolman referring to? Where can we find this "distinction today? Today ALL are "PROHIBITED" from using the public road, by statute!

> **"DRIVER'S LICENSE REQUIRED -- (1) NO PERSON ... shall drive any motor vehicle upon the highways in this state unless such a person has a valid driver's license ..." (emph. added)**
>
> **RCW 46.20.021**

This amounts to an absolute prohibition of the "common right" of the citizen to use the public highway. This statute denies the "distinction" referred to by this court in the HADFIELD decision. What ever became of the citizens' Right to use the public highway? Can it be legislated away? Can the Courts "rule" the right into obsolescence? The answer is a RESPONDING NO!

> **"Where rights secured by the Constitution are involved, there can be NO LEGISLATION, OR RULE-MAKING which would abrogate them." (emph. added)**
>
> **MIRANDA v ARIZONA, 384 us 436.**

When dealing with the use of the public highways, we have began with the premise that the use of the road is a "privilege" conferred by license, and not

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[2]/ For a complete discussion on HADFIELD, see HADFIELD v LUNDIN analyzed, infra.

a "RIGHT." But what if this premise is wrong? Could our lower Courts and our executive branch, be violating the citizen's Rights, and thereby committing crimes of their own? (See 18 UNITED STATES CODE 1983.) For years, the People have accepted this premise without question. The police have informed the People that "driving is a privilege." The authority for this premise appears to be that (1) a license is a privilege and (2) a license is required. But what if the statute "requiring" a license is "unconstitutional" when applied to the sovereign citizen? ARE WE BEING TOLD A HALF TRUTH?

P L A I N T I F F ' S T H E O R Y O F T H E C A S E

Extensive research, along with case and authority analysis, reveals a long train of legislative abuse coupled with a blind executive obedience resulting in a deprivation of the citizens' most valuable RIGHT -- the right to liberty!

Until the early 1900's, citizens of the State of Washington enjoyed the absolute freedom to move about at will and without restraint or imprisonment for the exercise of this fundamental right. In 1905 the Legislature passed "*An Act Regulating Automobiles Or Motor Vehicles On Public Roads Within The State Of Washington*." This statute required the licensing of the vehicle, NOT THE USER. However, this statute contained a clause allowing the

local governments the power to pass Ordinances affecting "*Vehicles FOR HIRE*." By 1910 the Legislature still had not required the individual to obtain an "*Operator's Permit*." At this point in our history, the Legislature still recognized and respected the citizens' RIGHT to drive upon the public highways. In 1915, the legislature passed an Act *"Relating To The Use Of The Public Highways*." (Session Laws of 1915, Chapter 142). This Act required the numbering of motor vehicles used upon the public highways. This statute also contained the following:

> **"The local authorities shall have NO POWER to pass or enforce any ordinance, rule, or regulation requiring of the owner or operator of any motor vehicle, ANY LICENSE OTHER THAN AN OCCUPATIONAL LICENSE or tax." (emph. mine)**
>
> **Session Laws of 1915, Chapter 142, Sec. 34.**

It was generally understood, in 1915, that a man had a right to drive his automobile upon the public highways. This common understanding was primarily due to the fact that the legislature had not attempted to convert this "Right" into a "Privilege." Law books, such as *Washington's "Business Law for Business Men*," contained sections as follows:

> **"SECTION 1351, BABBIT'S BOOK. In stating the general laws just mentioned, and their application to the subject of automobiles in Washington, the author desires to acknowledge the great assistance received from ..."**
>
> **"Law Applied to Motor Vehicles"**
> **by Charles Babbit**

> **"SECTION 1364, THE LAW OF THE ROAD. Highways are public roads,**

WHICH EVERY CITIZEN HAS A RIGHT TO USE ... The use of the highway IS NOT A PRIVILEGE, BUT A RIGHT, limited by the rights of others, and to be exercised in a reasonable manner."

During this period of time there began a flurry of cases challenging the power of the legislature to regulate VEHICLES FOR *HIRE (Cases cited and analyzed throughout this Brief, infra*.) The Supreme Court of Washington used these cases to draw the "distinction" between the "RIGHT to drive" and the "PRIVILEGE to drive." In every case brought before the Court, individuals, WHO WERE ENGAGED IN OPERATING VEHICLES FOR HIRE, asked this Court to declare that they had a "RIGHT" to drive upon the public highways. This Court consistently held that:

"The RIGHT of the citizen to travel upon the highway and to transport his property thereon, in the ordinary course of life and business, DIFFERS RADICALLY AND OBVIOUSLY from that of one who makes the highway his PLACE OF BUSINESS and uses it for private gain ..." (emph. added)

STATE v CITY OF SPOKANE, 109 Wn. 360, 186 P 864.

In every case that came before the Washington Supreme Court, the Court continued to draw the "distinction" between the "Right" and the "privilege" of driving (See cases cited and analyzed, infra). By 1923, the issue seemed to be well settled by the Courts. However, as is common to our system of law, the People remained ignorant of what was being required of them by the legislature. In 1921, the legislature of the State of Washington "*required all persons*" to obtain a driver's license before using their

automobiles on the public highways. At this time, the legislature did not assume, nor presume, that driving was a "privilege." The Legislature merely required the license of all individuals without question. The Courts, when entering upon the question of a "license," determined the "license" to be a "privilege" (see RAWSIB v DEPT. OF LICENSES, 15 Wn 2d 364 [1942]) and thus began the stealthy encroachment upon the right to drive upon the public highways. This judicial construction of the term "license," coupled with the complacency of the public, left the door open for the legislature to tax the "privilege" of driving and to require a license under threat of imprisonment. It is important to note, however, that NOT ONE COURT ever declared that the citizen did NOT have a right to drive upon the public highways until the 1986 decision in SPOKANE V PORT. Therefore, the citizens have now lost their RIGHT to drive upon the public highways due to:

(1) legislative abuse of power, and

(2) judicial construction of statutes and case law.

> **"When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another ... a decent respect to the opinions of mankind requires that they should declare THE CAUSES which impel the separation. ... But when A LONG TRAIN OF ABUSES AND USURPATIONS, pursuing invariably the same object evinces a design to reduce them under absolute despotism, IT IS THEIR RIGHT, IT IS THEIR DUTY, to throw off such Government, and to provide new guards for their future security." (emph. added).**
>
> **DECLARATION OF INDEPENDENCE, July 4, l776.**

D R I V I N G A R I G H T O R P R I V I L E G E?

It will be necessary to review early cases and legal authorities in order to reach a lawfully accurate theory dealing with this "right" or "privilege." We will attempt to show a sound conclusion as to what is a "right to use the public highway" and what is a "privilege to use the public highway."

The controlling case in the State of Washington appears to be HADFIELD v LUNDIN, 98 Wn. 657; 168 P. 516. It is necessary to analyze this case in depth, as it holds the keys to the action at bar.

H A D F I E L D v. L U N D I N

98 Wn 657. 168 P. 516

ANALYZED

This action was brought by Hadfield on his behalf and on behalf of other Jitney Bus Operators in King County to enjoin the Prosecuting Attorney of King County from enforcing the "Jitney Act" of l9l5. In this case, the constitutionality of the "Jitney Act" was challenged by Hadfield. Although the Washington Supreme Court eventually upheld the "Jitney Act" as constitutional, many references were made pointing out the difference between one who uses the public highways as a matter of "Right" and one who uses the public highways as a matter of "Privilege." In order to understand

the positions of the parties, we shall review the "Brief of Respondent" (Prosecutor of King County -- Alfred H. Lundin). IT MUST BE KEPT IN MIND that this is a case involving a "Vehicle FOR HIRE."

The King County prosecutor citing GREEN v SAN ANTONIO, stated:

> **"It is not contended by any one that the city would have the right to prevent the appellant from riding in his automobile on any street in the city ... for the streets were built (sic) for that purpose."**
>
> **GREEN v SAN ANTONIO, 178 SW 6;**
> **HADFIELD-RESPONDENT'S BRIEF, Pg 32.**

This appeared to be the common understanding of the PEOPLE and the legal community at this period of time, as will be shown. But when referring to "Vehicles FOR HIRE," the Prosecutor turned to another Opinion. On Pgs. 22 and 23 of his Brief, the King County Prosecutor stated that it was clear that if the legislature could prohibit the operation of automobiles FOR HIRE upon the streets of cities of the first class, the legislature could impose conditions upon the use of the "FOR HIRE" vehicles, no matter how rigorous or difficult the fulfillment of the conditions were. The Prosecutor then stated that "AS TO SUCH USERS" (for hire) the power of the municipality is plenary. On page 25 of his Brief, the Prosecutor stated that there was a great deal of difference between using the streets as a member of the general public for the purposes of transporting one's self and one's property and using the streets for the purpose of earning a living. What was the difference that even the Prosecutor recognized? He readily argued that the State had the power to prohibit the use of the streets for the purpose of "For Hire" vehicles. But he appears to agree that there is some class of persons who have a RIGHT to use the highways, over which the powers of the government are not plenary. In fact, every time the Prosecutor did state that the power was plenary, he was

careful to use the words "For Hire" in the statement.

On page 35 of the Respondent's Brief, the Prosecutor referred to someone who did have a RIGHT to use the road. The Prosecutor cited a case referring to the Jitney Bus obstructing the passage of:

"... THOSE WHO HAVE A VESTED RIGHT to use the streets for passage."

Who are these people who have a vested RIGHT? ARE THE PRESENT PLAINTIFFS INCLUDED IN THIS CLASS? If the Prosecutor did not recognize the Right of the common citizen to use the highways, why did he refer to the natural RIGHT of the citizen to traverse the streets of his city WITH A MOTOR VEHICLE for the conveyance of his family and friends? (Pg. 44 Respondent's Brief).

After reading the Respondent's Brief in HADFIELD, one can come to only one conclusion -- the King County Prosecutor understood the Right of the common citizen to use the public highways. Although what the Prosecutor understood, it is not an authority. The cases he cited obviously held some weight with the Washington Supreme Court. This is evident since the Court quoted from these cases in the ratio decision of the case.

Turning now to the Supreme Court's decision, the Court noted (cites from Pacific Rptr.) that:

> **"... the streets and highways BELONG TO THE PUBLIC, FOR THE USE OF THE PUBLIC IN THE ORDINARY AND CUSTOMARY MANNER." (emph. added)**
>
> **HADFIELD, supra at page 517.**

While the Court agreed that no individual had a right to use the public highways FOR THE PURPOSE OF BEING A COMMON CARRIER for private gain, the Court did recognize the "fundamental difference" between using the roads in the ordinary manner (*for personal travel and transportation*) and using the roads as a place of business (page 518). The Court, after stating that there was a "fundamental difference" between uses, stated that using the roads as a place of businesses was a "privilege" and the usual and ordinary use of the road by a private citizen, was a RIGHT!

This case leads to the irresistible conclusion that the streets and highways are established and maintained primarily for the purpose of TRAVEL AND TRANSPORTATION by the public. With this case analyzed, we will now consider the "fundamental difference" between this "RIGHT" of using the roads and the "privilege" of using the roads.

"The use of the highway for the purpose of travel and transportation IS NOT A MERE PRIVILEGE, but a COMMON AND FUNDAMENTAL RIGHT of which the public and INDIVIDUALS CANNOT RIGHTFULLY BE DEPRIVED." (emph. added)

CHICAGO MOTOR COACH v CHICAGO, 337 Ill. 200. 169 NE 22;
LIGARE v CHICAGO, 139 I11. 46 28 NE 934;
25 AM JUR (1st) HIGHWAYS, Sec. 163;
BOONE v VLSRK, 214 SW 607;
66 ALR 834.

and...

"The RIGHT of the citizen TO TRAVEL UPON THE PUBLIC HIGHWAYS and to transport his property thereon, either by horse-drawn carriage OR BY AUTOMOBILE, IS NOT A MERE PRIVILEGE which the city may prohibit or permit at will, BUT IS A COMMON RIGHT which he has under the Right to life, liberty, and the pursuit of happiness." (emph. added)

THOMPSON v SMITH, 155 Va 367, 154 SE 579;
71 ALR 604.

It is interesting to note that, not only does the public have a right to travel upon the public highways, but he may use his automobile to do so. It may be argued that this does not mean that one can "drive" his automobile, but only that he may "use" or "ride" in it. This, of course, is ludicrous as it would deny the citizen the right of "using" his own property and would require that he allow another to "use" his automobile. If, however, there remains any doubt:

The RIGHT of the citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business IS A COMMON RIGHT which he has under the Right to enjoy life, liberty, to acquire and possess property, and to pursue happiness and safety. IT INCLUDES THE RIGHT, in so doing, TO USE THE ORDINARY AND USUAL CONVEYANCES OF THE DAY and under the existing modes of travel, INCLUDES THE RIGHT ... TO OPERATE AN AUTOMOBILE THEREON, for the usual and ordinary purposes of life and business." (emph. added)

TECHE LINES v DANFORTH, 12 So. 2d 784;
THOMPSON v SMITH, supra.

So it would appear that one does have the RIGHT to drive an automobile upon the public highways of the State, and the citizen CANNOT be rightfully deprived of this liberty. (See also BERBERIAN v LUSSIER, 87 R.I. 226, 231; 139 A.2d 869 [1958]).

Where then, does this theory come from that "driving is a privilege?"

"... for while a citizen has the RIGHT to travel upon the public highways and to transport his property thereon, the Right does not extent, in whole or in part, AS A PLACE OF BUSINESS FOR PRIVATE GAIN. For the latter purpose, no person has a vested right to use the highways of the state, BUT IS A MERE PRIVILEGE OR LICENSE which the Legislature may grant or withhold at its discretion ..." (emph. added)

STATE v JOHNSON, 75 Mont. 240, 243 P 1073;
HADFIELD v LUNDIN, supra;
CUMMINS v JONES, 79 Ore 276, 155 P 171;
PACKARD v BANTON, 44 S. Ct. 257, 264 US 140, 68 L. ED 598;
and cases to numerous to list.

These courts held that a citizen has the RIGHT to travel upon the public highways, but that he did not have a Right to conduct business thereon.

It appears that until the l986 SPOKANE v PORT case, supra, ALL THE AUTHORITIES AGREED WITH THIS POSITION!

> **"Heretofore the court has held, and we think correctly, that while a citizen has the RIGHT to travel upon the public highways and to transport his property thereon, that right does not extend to the use of the highways, either in whole or in part, AS A PLACE OF BUSINESS FOR PRIVATE GAIN." (emph. added)**
>
> **BARNEY v BD OF RR COMM'RS, 17 P. 2d 82;**
> **WILLIS v BUCK 81 MONT., 472, 263 P. 982.**

> **"The RIGHT of the citizen to travel upon the highway and to transport his property thereon, in the ordinary course of life and business, DIFFERS OBVIOUSLY AND RADICALLY from that of one who makes the highway his place of business and uses it for private gain ..." (emph. added)**
>
> **STATE v CITY OF SPOKANE, l09 Wn 360, 186 P. 864.**

What is this RIGHT which differs so "radically and obviously" from that of one who uses the highway as his place of business? Who better to inform us than Justice Tolan of our own Supreme Court? In STATE v CITY OF SPOKANE, this Court not only noted a very "radical and obvious" difference, but the Court went on to explain and clarify what this "radical and obvious" difference was.

> **"The former is the usual and ordinary RIGHT of the citizen, A COMMON RIGHT, A RIGHT COMMON TO ALL, while the latter is special, unusual, and extraordinary"**
>
> **"This distinction, ELEMENTARY AND FUNDAMENTAL in character, IS RECOGNIZED BY ALL THE AUTHORITIES." (emph. added)**
>
> **STATE v CITY OF SPOKANE, supra.**

In fact, an impressive array of cases have declared this "distinction" in courts ranging from state courts to federal courts.

> **"The Right of the citizen to travel upon the highway and to transport his property thereon, in the ordinary course of life and business, DIFFERS RADICALLY AND OBVIOUSLY from one who makes the highway his place of business and uses it for private gain ... The FORMER IS THE USUAL AND ORDINARY RIGHT OF THE CITIZEN, A RIGHT COMMON TO ALL, while the latter is special, unusual, and extraordinary." (emp. added)**
>
> **EX PARTE DICKEY (DICKEY v DAVIS), 76 W.Va. 576, 85 SE 781 (cited by Washington decisions) /[3]**

There has never been a dissent from this position until SPOKANE v PORT, supra. (See Am. Jur 1st, Const. L., Sec 329 and corresponding Am. Jur 2nd)

> **"Personal liberty -- or the RIGHT to enjoyment of life and liberty -- is one of the FUNDAMENTAL AND NATURAL RIGHTS, which has been protected by its inclusion as a guarantee in the various constitutions, which is not dependent upon the U.S. Constitution . ... It is one of the most SACRED AND VALUABLE RIGHTS ... AND IS REGARDED AS INALIENABLE." (emph. added).**
>
> **16 CJS Const. L., Sec 202.**

As we can see, the distinction between a "RIGHT" to use the public highways and a "privilege" to use the public highways is drawn upon the line of "using the public highways as a place of business."

Various State Courts have held that his is so, including this Court! But what have the Federal Courts held on this point?

> **"First, IT IS WELL ESTABLISHED LAW that the highways of the state are public PROPERTY, that their primary and preferred use is FOR PRIVATE PURPOSES, and that their use for PURPOSES OF GAIN is special and extraordinary which, generally at least, the legislature can prohibit or condition as it sees fit." (emph. added)**
>
> **STEPHENSON v BINFORD, 287 US 251, 77 L. Ed 288, 53 S. CT. 181; 87 ALR 721, 727; PACKARD v BANTON, 264 US 140, 144, 68 L. Ed 596, 607, 44 S. Ct. 257 and cases cited; FROST 7 F. TRUCKING CO. v R.R. COMM., 271 US 583, 592, 70 L.Ed. 1101, 1104; 47 ALR 457; 46 S. Ct. 605.**

So what is a "privilege" to use the roads? By now it should be apparent that if one is using the public highways as a place of business, he is exercising a "privilege." If, however, one is merely traveling in his private automobile upon the public highways, he is exercising a "RIGHT." This "distinction" MUST BE RECOGNIZED or public highways will become the sole property of the modern day "robber barons," THE LEGISLATURE.

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[3] / **See also TECHE LINES v DANFORTH, supra., and THOMPSON v SMITH, supra.**

"(The roads) ... are constructed and maintained at public expense, and no person, therefore, can insist that he has, or may acquire, a vested right to their use in CARRYING ON A COMMERCIAL BUSINESS." (emph. added.)

EX PARTE STERLING, 53 SW 2d 294;
BARNEY v R.R. COMM'RS, 17 P. 2d 82;
STEPHENSON v BINFORD, supra.

"The use of the highways of the state FOR PURPOSES OF GAIN is special and extraordinary, and may generally be prohibited or conditioned by the legislature as it sees fit." (emph. added)

STEPHENSON v BINFOR, SUPRA;
R.R. COMMISSION v INTER-CITY FORWARDING Co., 57 SW. 2d 290;
PARLETT COOPERATIVE v TIDEWATER LINES, 165 A. 313.

"When the public highways are made the PLACE OF BUSINESS the state has a right to regulate their use in the interest of safety and convenience of the public as well as the preservation of the highways." (emph. added)

BARNEY v R.R. COMM'RS., supra.

"Its (the state's) right to regulate such use IS BASED UPON THE NATURE OF THE BUSINESS and the use of the highways IN CONNECTION THEREWITH." (emph. added)

Ibid.

"We know of no inherent right in one to use the highways FOR COMMERCIAL PURPOSES. The highways are primarily for the use of the public, and in the interest of the public, the state may prohibit or regulate ... the use of the highways FOR GAIN." (emph. added)

ROBERTSON v DEPARTMENT OF PUBLIC WORKS, 180 Wn. 133, 135.

If the citizen does not have a COMMON RIGHT to use the public highways

(as is decided in SPOKANE v PORT, supra), it appears that the various Courts, including this Court, have wasted an enormous amount of time drawing the "distinction" which Division III of the Court of Appeal has ruled, DOES NOT EXIST!

> **"As used here, "privilege" means a qualified right or a particular advantage enjoyed by a class, BEYOND THE COMMON ADVANTAGE OF OTHER CITIZENS ..." (emph. added)**
>
> **SPOKANE v PORT, _____ Wn. App.____, _____, P. 2d____(1986).**
> **(Compare with STATE v CITY OF SPOKANE, supra: "a COMMON RIGHT ...)**

It would appear more reasonable to conclude that Division III had erred in its recent decision and that the "distinction" does, indeed, exist. It should be noted that previous to the SPOKANE v PORT decision, research had not turned up one case or authority acknowledging the State's power to convert the individual's "RIGHT" to travel upon the public highways into a "privilege." It would appear that there should be considerable authority on a subject as important as this -- the deprivation of LIBERTY of individuals using the public highways in the ordinary course of life and business. Simply put, research shows that this power does NOT EXIST -- THE POWER IS DENIED!

Therefore, we must conclude (in the absence of any authority to the contrary) that the citizen DOES HAVE A RIGHT to TRAVEL and TRANSPORT HIS PROPERTY (HADFIELD v LUNDIN, supra -- Wash. S. Ct.), BY AUTOMOBILE (THOMPSON v SMITH, supra -- US S. Ct.; TECHE LINES v DANFORTH, supra), UPON the

PUBLIC HIGHWAYS (HADFIELD v LUNDIN, supra -- Wash. Sp.Ct.) and that this RIGHT IS A COMMON RIGHT, COMMON TO ALL (STATE v CITY OF SPOKANE, supra -- Wash. S.Ct.).

D E F I N I T I O N S

Although there is no need to resort to dictionary definitions, for the purpose of construction of a statute in question (VITAL FOODS PRODS., INC. v STATE, 91 Wn 2d 132, 134, 587 P. 2d 535 [1978]), these definitions are provided as evidence of the "steady encroachment" upon the RIGHT to drive. The easiest way of "encroaching" upon a right is to change the meaning of a word, after the word has been used in the language of a statute. It appears that this insidious method of encroachment has run rampant in this issue, and therefore, the Plaintiffs demonstrate to this Court a few of the language constructions which the legal system has changed in order to support the deprivation of this RIGHT to drive. As will be shown, many terms as used today did not, in their legal context, mean what we assume they mean. This results in a misapplication and an over breadth of statutes.

T R A V E L

We have seen that a citizen has the RIGHT to "travel" upon the public highways.

> "The terms "Travel" and "traveler" are usually construed in their broad and general sense ... so as to include all THOSE WHO RIGHTFULLY USE THE HIGHWAYS viatically and who have occasion to pass over them FOR THE PURPOSE OF BUSINESS, CONVENIENCE, or PLEASURE." (emph. added)
>
> 25 AM. JUR 1st, Highways, Sec. 427

> "Traveler -- one who passes from place to place, whether for pleasure, instruction, business, or health."
>
> BOUVIER'S LAW DICTIONARY, (1914) Pg. 3309.

> "TRAVEL--to journey or to pass through or over; as a county, district, ROAD, etc. To go from one place to another, whether on foot, on horseback, or in any conveyance as a train, AN AUTOMOBILE, carriage, ship, or aircraft; make a journey."
>
> CENTURY DICTIONARY, Pg. 2034.

Therefore, the term "travel" or "traveler" refers to one who uses a conveyance to go from one place to another and includes all who use the roads as matter of RIGHT. Note that the RIGHT to travel is without qualification and its application to the COMMON and ORDINARY TRAVELER is not conditional upon his choice of conveyance: (to travel)" ... is to pass or make a journey from place to place, whether on foot, on horseback, or in ANY conveyance."

(See HENDREY v TOWN OF NORTH HAMPTON, 56 A. 922, 924). Notice that not once do the words "FOR HIRE" occur in any of these definitions. The term "travel" or "traveler" implies, by definition, one who uses the road as a means to move from one place to another.

D R I V E R

In contradistinction to the term "traveler," we find that a "driver" is defined as:

> **DRIVER -- one EMPLOYED in conducting a coach, carriage, wagon, or other vehicle ..." (emph. added)**
>
> **BOUVIER'S LAW DICTIONARY, (1914) Pg. 940.**

This definition includes "one who is EMPLOYED in conducting a vehicle." It should be self-evident that this person could not be "traveling" on a journey, but is a person who is using the road as a "place of business." Today we assume that a "traveler" is a "driver" and a "driver is an "operator." This, however, is not the case.

"It will be observed from the language of the ordinance that a DISTINCTION is to be drawn between the terms "operator" and "driver;" the "operator" of the service car being the person who IS LICENSED to have the car upon the streets IN THE BUSINESS OF CARRYING PASSENGERS FOR HIRE; while the "driver" is the one who actually drives the car. However, in the actual PROSECUTION OF BUSINESS, it is possible for the same person to be both "operator" and "driver." (emph. added).

NEWBILL v UNION INDEMNITY CO., 60 SW 2d 658.

To further clarify the definition of an "operator" this Court observed that this was a "vehicle for hire" and that it was in the "business of carrying passengers." This describes a person who uses the streets as a "place or business," or in other words, a person who is engaged in a "privilege" of using the roads FOR GAIN. (See HADFIELD v LUNDIN, supra). This, then, further clarifies the "distinction" so often referred to by the Courts. One who "travels" and transports his property upon the public highways, AS A MATTER OF RIGHT, is a traveler. On the other hand, one who uses the highways as a place of business, AS A MATTER OF PRIVILEGE, is an "operator" or a "driver."

T R A F F I C

Most statutes dealing with the use of the public highways, claim to be statutes controlling "traffic."

> **"... traffic thereon is to some extent, destructible, therefore, the prevention of unnecessary duplication of AUTO TRANSPORTATION SERVICE will lengthen the life of the highways or reduce the cost of maintenance. The revenue derived by the state ... will also tend toward the public welfare by producing, AT THE EXPENSE OF THOSE OPERATING FOR PRIVATE GAIN, some small part of the cost of repairing the wear ..." (emph. added)**
>
> **NORTHERN PACIFIC RY. CO. v SCHOENFELT, 123 Wn 579, 213 P. 26.**

In SCHOENFELT, Justice Tolman expounded upon the key to raising revenue by taxing the "privilege" of using the public highways, AT THE EXPENSE OF THOSE OPERATING FOR PRIVATE GAIN. In this case the word "traffic" is used in conjunction with the "unnecessary AUTO TRANSPORTATION SERVICE" or, in other words, "vehicles for hire." This is because the word "traffic" was, as in times past, strictly construed as "conducting business."

> **TRAFFIC -- Commerce, trade, sale or exchange of merchandise, bills, money, and the like; the passing of goods and commodities from one person to another for and equivalent in goods or money ...**
>
> **BOUVIER'S LAW DICTIONARY, (1914) Pg. 3307.**

Here again, notice that this definition refers to one who is "conducting business." No mention is made of one who is "traveling" in

his automobile. Certainly, automobiles were well known and were in use by 1914. This definition is of one who is engaged in the passing of a commodity or goods in exchange for money -- "FOR HIRE VEHICLES" for example. Furthermore, the words "traffic" and "travel" must have a different meaning in the Court's cognizance. In EX PARTE DICKEY the Court stated:

> "... in addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks, when unnecessarily numerous, interfere with the ordinary TRAFFIC and TRAVEL and obstruct THEM." (emph. added)
>
> EX PARTE DICKEY, supra at 785.

The Court, by using both the terms "traffic" and "travel," signified its recognition of a distinction between the two. But what was this distinction? We have already defined both the terms "traffic" and "travel," but to clear up any doubt:

> "the word "traffic" is manifestly used here in a secondary sense, and has reference to the BUSINESS OF TRANSPORTATION rather than to it primary meaning of interchange of commodities." (emph. supplied)
>
> ALLEN v THE CITY OF BELLINGHAM, 95 Wn 12, 163 P. 18.

In ALLEN, this Court defined the word "traffic" (in both its primary and secondary sense) as referring to "business," NOT MERE TRAVEL! So as can clearly be seen, the term "traffic" is business related and, therefore, it is a "privilege" thus bringing "traffic" properly under the police power of the legislature. However, this term cannot be applied to one who is not using

the road as a PLACE OF BUSINESS.

L I C E N S E

It only seems proper to define the word "license" as the definition will be extremely important to Plaintiff's position. A "license" is defined as:

> **"... the permission by competent authority to do an act which, without such permission, would be illegal, a trespass, or a tort."**
>
> **PEOPLE v HENDERSON, 218 NW.2d 4.**

> **"Leave to do a thing which licensor could prevent."**
>
> **WESTERN ELECTRIC CO. v PACENT REPRODUCER CORP., 42 F.2d 116,188.**

> **"... (its object) is to confer right or power WHICH DOES NOT EXIST without it and exercise of which, without license would be illegal." (emph added)**
>
> **INTER-CITY COACH LINES v HARRISON, 157 SE 673,676.**

In order for these three definitions to apply (to the COMMON RIGHT of the individual to use the public highways) the legislature would have to take the position that the exercise of the Constitutional RIGHT to use the highways, in the ordinary course of life and business was, in fact, "illegal, a trespass,

or a tort," which then the legislature could prevent.

This position would, however, raise magnanimous constitutional questions as this position is diametrically opposed to fundamental Constitutional law.

This position would also send a signal to WE THE PEOPLE, that the legislature has now CAPTURED and does now POSSESS the roads and highways that WE THE PEOPLE have paid for with our gas and tire taxes. This would, of course, be seen from Plaintiff's view as an uprising of the public servants against the Sovereign People. We must never forget that the PEOPLE provided the taxes with which to build roads and they belong to us. Although we have entrusted the State with the care and construction of our roads, we have never given the State the authority to EXCLUDE us from our own property. WE ARE THE STATE!

This brings in another consideration of importance to this definition of a "license." The term "license" implies a DIVESTITURE of right or title by the licensee to the property which is subject to the "license." A "license" is a mere revocable "privilege" to do an act (or series of acts) upon land, and EXCLUDES THE RIGHT OR TITLE THERETO. (See EASTMAN v PIPER, 229 P. 1002, 1003; GRAVELLY FORD CANAL CO. v POPE AND TALBOT LAND CO., 178 P. 155, 163; HOWES v BARMON, 81 P. 48, 49, RODEFER v PITTSBURGH, 74 NE 183, 186).

A license confers no right and is, "mere leave to be enjoyed as

a matter of indulgence at the will of the party granting it." (CITY OF CARBONDALE v WADE, 106, 111. App. 654).

With this understanding, how can the public be subjected to licensing in order to be allowed to travel upon the PUBLIC HIGHWAYS? Since the public owns the highways (STEPHENSON v BINFORD, supra), the State cannot claim ownership of these lands and, therefore, the State cannot endow the Citizen with the temporary "privilege" of using that which already belongs to the Citizen. The State has NO RIGHT or OWNERSHIP of the land of which to divest itself of.

A proper definition of a "license" then, would be:

> **"A permit, granted by an appropriate governmental body, generally for consideration, to a person, firm, or a corporation, to pursue SOME OCCUPATION or to CARRY ON SOME BUSINESS which is subject to regulation under the police power." (emph. added)**
>
> **ROSENBLATT v CALIFORNIA STATE BD. OF PHARMACY, 158 P.2d 199, 203.**

This definition would fall more in line with the "privilege" of carrying on business in the public streets.

These definitions demonstrate a slow and steady change in the meaning of the terms which we so readily accept. Once a court has ruled upon its understanding of a term, these changes in common usage of the terms, have the effect of changing the apparent meaning of a decision. If this fact is

ignored, we destroy the meaning of "stare decisis."

P O L I C E P O W E R

The confusion of police power with the power of taxation usually arises in cases where the police power has affixed a penalty to a certain act or required licenses for OCCUPATIONS to be taken out and a certain sum paid therefore.

The power used by the Legislature began as the "taxing power" and is now being claimed as "police power." If we recognize that this is a "privilege tax" and separate the RIGHT of driving from the "privilege of driving," then the power of taxation can be used to control the "privilege."

If, however, we are going to claim that this power is the police power, we must first consider the following:

1) a threatened danger?

2) Does the regulation involve a Constitutional Right? Is the regulation reasonable?

PEOPLE v SMITH, 108 Mich. 527, 66 NW 382, 62 Am St. Rep. 715; BOUVIER'S LAW DICTIONARY, Pg. 2616 (police power).

When applying these three questions to the case at hand, some very

important issues emerge.

First -- "Is there a threatened danger in the individual using his automobile upon the public highways in the ordinary course of life and business?" The answer is NO! There is nothing inherently dangerous in the use of the automobile when it is properly managed. Its guidance, speed, and noise are all subject to quick and easy control and under a competent and considerate manager - it is as harmless on the road as a horse and buggy.

It is the improper MANNER of which the automobile is driven, and THAT ALONE, may a threat to the safety of the public. The auto's ability to stop quickly and its quick response to guidance would seem to make the automobile one of the least dangerous of conveyances. (YALE LAW JOURNAL -- Dec. l905). The same principles of law are applicable to them as to other vehicles upon the highway.

> **"It is therefore, the adaptation and use, rather than the form or kind of conveyance that concerns the courts."**
>
> **INDIANA SPRINGS CO. v BROWN, 165 Ind. 465, 74 NE 615.**

The automobile is not inherently dangerous. (MOORE v RODDIE, 106 Wn. 518; COHEN v MEADOR, 89 SE 867; BLAIR v BROADMORE, 93 SE 632). The manner in which the automobile is driven (if not driven properly) is ALONE the threat to the safety of the public.

The Legislature has attempted to deprive all persons of their RIGHT to use the roads in the ordinary course of life and business, because someone MIGHT BECOME DANGEROUS. This is not only a deprivation of LIBERTY but also a deprivation of DUE PROCESS. (See DUE PROCESS, infra.) Because someone MIGHT BECOME DANGEROUS, what will the legislature deprive us of next -- our pursuit of happiness, or even our life? If it can be held that the legislature has the power to deprive us of our liberty, why then, can't the legislature deprive us of our life or our pursuit of happiness (without due process) in the interest of protecting the public?

Second, -- "Does the regulation involve a Constitutional Right?" This question has been addressed and answered within this Brief and need not be reinforced other than to remind the Court that citizen HAVE A RIGHT TO TRAVEL IN THE ORDINARY COURSE OF LIFE AND BUSINESS. Therefore, regulations involve Constitutional Rights.

Lastly, and most important to this issue, -- "Is the regulation reasonable?" The answer is NO! It will be shown in a later section of this Brief (see "regulation," infra) that this statute (licensing) is oppressive and could be administered effectively by less oppressive means.

Although the Fourteenth Amendment to the Federal Constitution does not interfere with the proper exercise of the police power over citizens of the United States (in accordance with the general principle that the power must be exercised so as not to invade UNREASONABLY the rights guaranteed

by the Fourteenth Amendment) and the inhibitions there imposed (SOUTHERN R. CO. v VIRGINIA, 290 US 190). Moreover, the ultimate test of the propriety of police regulations must be found in the Fourteenth Amendment, since it operates to limit the field of police power to the extent of PREVENTING THE ENFORCEMENT OF STATUTES IN DENIAL OF RIGHTS that the Amendment protects. (PARKS v STATE, 64 NE 862).

With particular regard to the U.S. Constitution, it is elementary that a RIGHT secured by, or protected by, that document CANNOT BE OVERTHROWN OR IMPAIRED by any State police authority (CONNALLY v UNION SEWER PIPE CO., 184 US 540, 22 S.Ct.431; LEFARIER v GRAND TRUNK R. CO., 24 A. 848, 17 LRA 111; O'NEIL v PROVIDENCE AMUSEMENT CO., 108 A. 887, 8 ALR 1590). The police power of the State must be exercised IN SUBORDINATION to the provisions of the U.S. Constitution (PANHANDLE EASTERN PIPELINE CO. v. STATE HIGHWAY COMMISSION, 294 US 613, 79 L.Ed. 1090, 55 S.Ct. 563; BUCHANAN v. WARLEY, 245 US 60, 62 L.Ed. 149, 38 S.Ct. 16).

> "All sorts of restrictions and burdens are imposed under it (police power), and when these are NOT IN CONFLICT with any CONSTITUTIONAL PROHIBITIONS, OR FUNDAMENTAL PRINCIPLES, they cannot be successfully assailed in a judicial tribunal. ... but under the pretense of prescribing a police regulation, the State cannot be permitted to ENCROACH UPON ANY OF THE JUST RIGHTS OF THE CITIZEN which the Constitution intended to secure against abridgement." (emph. added).
>
> SLAUGHTER HOUSE CASES, 16 WALL 36, 87.

"It may be stated, as a general principle of law, that it is for the legislature to determine whether the conditions exist which warrant the exercise of this power; but the question as to what are the subjects of its exercise, is clearly a judicial question. ONE MAY BE DEPRIVED OF HIS LIBERTY AND HIS CONSTITUTIONAL RIGHTS THERETO MAY BE VIOLATED, WITHOUT ACTUAL IMPRISONMENT OR RESTRAINT OF HIS PERSON." (emph. added)

IN RE AUBREY, 36 Wn 308, 314-315, 78 P. 900 (1915).

It is well and amply settled that the Constitutional rights protected by invasion by the police power, include rights safeguarded both by express and implied prohibitions in the constitutions (TIGHE v OSBORN, 131 A. 801, 43 ALR 819). As a rule, fundamental limitations of regulations under the police power are found in the spirit of the constitutions, not in the letter, although they are just as efficient as if expressed in the clearest language (MEHLOS v MILWAUKEE, 156 WIS 591, 146 NW 882, 51 LRA 9N.S.0. 1009).

However, in this case, the language IS CLEAR!

"No person shall be ... deprived of life, LIBERTY, or property, WITHOUT DUE PROCESS OF LAW." (emph. added)

U.S. CONSTITUTION, 5th Amendment.

In the action at bar, the legislature of this State, (presumably under the police power) has attempted to deprive ALL PERSONS of the RIGHT TO LIBERTY, without DUE PROCESS of law.

D U E P R O C E S S

The essential elements of "due process of law' are:

"... NOTICE, and ... the opportunity to defend ...

SIMON v CRAFT, 182 US 427.

Yet not one person has been given notice or the opportunity to defend against this unwarranted loss of our RIGHT to travel, by automobile, upon the public highways, in the ordinary course of life and business. This amounts to an ARBITRARY DEPRIVATION of liberty.

"There should be no arbitrary deprivation of life or LIBERTY ..."

BARBOUR v CONNOLLY, 113 US 27, 31;
YICK WO v HOPKINS SHERIFF, 118 US 356.

"The right to "travel" is part of the "liberty" of which a citizen cannot be deprived without due process of law under the Fifth Amendment, This Right was emerging as early as the Magna Charta."

KENT v DULLES, 357 US 116, 125.

"As we have said on more than one occasion, it may be difficult, if not impossible, to give to the terms "due process of law" a definition which will embrace every permissible exertion of power affecting private rights and exclude such as are forbidden . ... In this country, the requirement is intended to have a similar

effect against legislative power, that is, to secure the citizen AGAINST ANY ARBITRARY DEPRIVATION OF HIS RIGHTS, whether relating to his life, LIBERTY, or his property ... the great purpose of this requirement is to exclude everything that is arbitrary and capricious, IN LEGISLATION, affecting the rights of citizens." (emph. added)

DENT v STATE OF WEST VIRGINIA, 129 US 114, 123-124, 32 L.Ed. 623, 9 S.Ct. 231 (1888).

The focal point of this question of police power and due process, must be balanced upon the pinnacle of making the public highways a safe place for the public to travel. If a man travels in such a manner so as to create a damage to another, an action would lie CIVILLY for recovery of damages by the injured party(s). The state could also proceed against the individual to deprive him of his RIGHT to use the public highways. This process would fulfill the requirements of due process while at the same time, insuring that the RIGHTS guaranteed by the Constitution, would be safe from ARBITRARY DEPRIVATION by the State.

One of the most famous and perhaps the most quoted definitions of "due process of law," is that of Daniel Webster in the DARTMOUTH COLLEGE CASE, (4 Wheat 518) in which he declared that by due process of law is meant, "a law which hears before it condemns, which proceeds upon inquire, and renders judgement ONLY AFTER TRIAL." (See also STATE v STRASBURG, 110 P 1020, 32 LRA (N.S.) 1216; DENNIS v MOSES, 52 P. 333, 40 LRA 302). Somewhat similar is the statement: "That it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he

has been duly cited to appear and has been afforded an opportunity to be heard. Judgement without such citation and opportunity lacks all the attributes of a judicial determination, it is JUDICIAL USURPATION and is oppressive and can never be upheld where justice is fairly administered." (12 Am. Jur. 1st, Const. Law, Sec.573, p. 269).

> **NOTE: THIS SOUNDS LIKE THE PROCESS USED TO DEPRIVE ONE OF THE "PRIVILEGE" OF OPERATING A VEHICLE "FOR HIRE." It should be remembered, however, that we are discussing the arbitrary deprivation of the RIGHT to use the road which is COMMON to ALL individuals.**

The futility of the state's position is elucidated in the 1959 Washington Attorney General's Opinion on a similar issue.

> **"In BARBOUR v WALKER, 126 Okl. 227, 259 P. 552, 56 ALR 1049, 1053, THE DISTINCTION BETWEEN THE RIGHT OF THE CITIZEN TO USE THE PUBLIC HIGHWAYS for private rather than commercial purposes IS RECOGNIZED ..." (emph. added)**
>
> **Wash. Attorney General Opinion 59-60, No.: 88, P. 10.**

> **"Under its power to REGULATE private uses of our highways, our legislature has required that motor vehicle operators be licensed. ... Undoubtedly, the primary purpose of this requirement is to insure, as far as possible, THAT ALL MOTOR VEHICLE OPERATORS WILL BE COMPETENT AND QUALIFIED, thereby reducing the potential hazard or risk of harm, to which other users of the highway MIGHT otherwise be subject. But once having complied with this regulatory provision, by obtaining the requisite license, a motorist enjoys the PRIVILEGE of traveling freely upon the highways ..."**
>
> **Wash. AGO 59-60, No: 88, Pg. 11.**

The Attorney General sets up a dangerous precedent in this Opinion. What is "recognized" as a RIGHT in the beginning of this opinion, ends up a "PRIVILEGE' at the end of the Opinion. This Opinion appears to FLAUNT the power to convert a RIGHT into a PRIVILEGE!

This type of action may have been able to withstand judicial scrutiny in 1959, when this was written, but as of the l966 "MIRANDA" decision, this defense of the State's action must fail.

> **"WHERE RIGHTS SECURED BY THE U.S. CONSTITUTION ARE INVOLVED, THERE CAN BE NO RULE MAKING OR LEGISLATION WHICH WOULD ABROGATE THEM."**
>
> **MIRAND v ARIZONA, 384 US 436.**

The very content of the Attorney General's Opinion shows that the Legislature (legislation) has abrogated the RIGHT, (which is recognized) and converted it to a privilege. However, as we apply Miranda to this action, we can see that the Legislature does not have the power to abrogate the RIGHT. Further, the legislature cannot force a citizen to waive a RIGHT and convert this RIGHT into a privilege. Moreover, we have seen that a "privilege" is conducting BUSINESS upon the roads or operating FOR HIRE VEHICLES.

The legislature has attempted, by legislative fiat, to deprive the citizen of his RIGHT to use the public highways in the ordinary course of life

and business, and they have done so without affording the citizen the safeguard of "DUE PROCESS." THIS BRIEF, SO FAR, HAS CONTAINED THE VERY ESSENCE OF "STEALTHY ENCROACHMENTS" of an incredible magnitude. This has been accomplished under the guise of "REGULATION."

R E G U L A T I O N

> **"In addition to the REQUIREMENT that the regulations governing the use of the highway MUST NOT BE VIOLATIVE OF CONSTITUTIONAL GUARANTEES, the prime essentials of such regulations are REASONABLENESS, impartiality, and definiteness or certainty." (emph. added)**
>
> **25 AM JUR 1st, Highways, Sec 260.**

> **"Moreover, a distinction MUST BE OBSERVED between the REGULATION of an activity which may be engaged in as a MATTER OF RIGHT and one carried on by government sufferance or permission." (emph. added)**
>
> **PACKARD v BANTON, 264 US 140, 145.**

One can certainly say that these "regulations" are impartial, as they are being applied to ALL, even those beyond the boundaries of the legislative power. However, we must consider whether or not such "regulations" are reasonable and non-violative of Constitutional guarantees.

RCW 46.20.021 requires that one have a valid drivers license before one can drive upon the public highways. Before we examine RCW 46.20.021, it is

necessary to consider RCW 46.20.120 and RCW 46.20.130. These two statutes provide for the testing of any person who wishes to operate a motor vehicle upon the public highway. These tests are to include a test of one's eyesight and ability to recognize regulatory signs and warnings, one's knowledge or regulatory laws, and an actual demonstration of one's ability to use an automobile in a manner which will not endanger the public.

The Plaintiffs do not challenge these statutes as unconstitutional and Plaintiffs readily recognize that these tests are a valid exercise of the police power. The Plaintiffs further recognize that these statutes bear a reasonable nexus with the purpose of "improving the safety of our highways." The Plaintiffs have never contended that the police power could not be used to test the individual for competency to safely use a motor vehicle.

With this in mind, we can now properly view the contents of RCW 46.20.021. RCW 46.20.021 requires that all persons obtain a "license" before operating a motor vehicle. How does this statute "improve the safety of our highways?" RCW 46.20.021 does not require any form of test. How does one become a safer driver by carrying a piece of plastic called a license? Would not a person carrying a "certificate of demonstrated ability" be just as safe a driver?

In reality, one does not become a safer driver and the public highways are not a safer place because everyone upon the highways has a drivers license in his or her pockets. The State could carry out its goal of making the

highways safer, and in fact, have made the highways safer through the enactment of RCW 46.20.120 and RCW 46.20.130. In other words, if RCW 46.20.021 were to be declared unconstitutional, the highways would remain just as safe through the use of these other statutes.

One might argue that the "license" required in RCW 46.20.021 is merely "proof" of one's having passed these regulatory tests. We must keep in mind that when a State or Municipality passes a statute which affects constitutional freedoms, the State or Municipality must use any alternative available which would exert a less severe impact upon the RIGHT (See 734 F.2d 666).

Any form of "Certificate" would serve the purpose of proving that one had passed the regulatory tests. These "Certificates" would be less intrusive upon one's constitutional rights, as the lower Courts all view the "license" as a privilege, and as a privilege, the license is not protected by constitutional guarantees of due process.

RCW 46.20.021 also contains some other language which bears an examination. This language was considered by Division II of the Washington State Court of Appeals in l975. In ABERDEEN v COLE (13 Wn.App. 617, 537 P.2d 1073 [1975]) the Court considered the language presented by RCW 46.20.021 and the meaning of the word "privilege." In this case, the Court determined that the "privilege" in RCW 46.20.021 was granted by the act of obtaining a "license" and that a person who had not obtained a "license"

did not have a "privilege" and therefore, could not have his privilege revoked. The Courts dismissed the charges against the accused and found that the statutes in question did not apply to him because he did not have a license.

Now we turn to the reasonableness of RCW 46.20.021. Division III of the Court of Appeals has determined that all persons must be licensed. SPOKANE v PORT, supra. If this is to be the case, we need only to ask two questions:

l) Does RCW 46.020.021 accomplish its goal?

The attempted explanation of this statute is that it is enacted "to insure the safety of the public by insuring, as much as is possible, that all are competent and qualified." These goals are, indeed, wonderful and good. However, the Legislature has provided the way to qualify for a license without being tested for competence. It is not necessary that one to take a test to RENEW his license, PROVIDED that one PAYS THE FEE (TAX) in order to qualify! Therefore, one can maintain a license from the time he is first "licensed" until the day he dies (no matter how INCOMPETENT he becomes), by merely renewing the "license" before it expires. Therefore, it is possible to completely skirt the purported goal of this "feigned regulation," thus proving that this regulation DOES NOT accomplish its goal and the State's contention proves to be less than reasonable.

Additionally, in determining whether a State or Municipal law

affecting constitutional freedoms is narrowly tailored enough to pass constitutional muster, it is appropriate to consider whether ALTERNATIVE MEANS are available to the state that would exert less severe impact on those rights. (734 F.2d 666).

The second question which must be asked is: 2) Is RCW 46.20.021 reasonable?

This statute cannot be determined "reasonable" since it requires that the citizen waive his RIGHT TO LIBERTY. The purported goal of this statute could be met by a much less oppressive means.

The Federal Aviation Administration is charged with much the same responsibility (when it comes to aircraft) as the Department of Licensing. The F.A.A. enforces "regulations" put into effect by the Congress of the United States under the commerce clause of the US Constitution. This, however, is where the similarity ends.

The Federal Aviation Administration recognizes the RIGHT to liberty of the private individual, and only requires the private individual to prove his competency. Once this is done, the individual is free to fly with a "*Certificate Of Demonstrated Ability*." This certificate never expires and the citizen is free to fly without "TOLL." Should a private pilot, through his actions, prove to be an unsafe flyer, then, and only then, will the F.A.A. revoke his Certificate. The Certificate is not conditional upon the paying of

a tax!

If a person wishes to fly a COMMERCIAL AIRCRAFT, then he must obtain a "pilot's license." This due to the fact that the commercial pilot is using the aircraft as a FOR HIRE vehicle.

In contradistinction, the Department of Licenses forces ALL persons to obtain a license and does not "RECOGNIZE" the "DISTINCTION" between the private citizen and the commercial driver. Whereas, the D.O.L. could legitimately "tax" the commercial driver every year, the Common Law State Citizen are taxed for the RIGHT to TRAVEL using the ambiguous term "resident" without clear qualification. And if a individual does not pay the TAX, his RIGHT to travel is cancelled. This deprives all citizens of their Right to travel and allows citizens to travel, conditioned upon the payment of a tax.

If the results of RCW 46.20.021 are different from the results of F.A.A. regulations, even though the responsibilities and goals are the same, there must be a reason for this. What could coerce the legislature into this arbitrary deprivation of RIGHTS? MONEY!

> **"Moving traffic violations of a non-serious nature should be reclassified as infractions, THEREBY, ELIMINATING THE RIGHT TO A JURY TRIAL." (emp. added)**
>
> **REPORT 3 (FEB. 1972) 9.**
> **(Report to the Law Enforcement Assistance Administration of California).**

Since a license is a "privilege," once we force everyone to get a license, we can dispense with such frivolous items such a jury trial, counsel, burden of proof, presumption of innocence, etc.. No longer will the citizens have the Right to these items -- BECAUSE THEY ARE EXERCISING A PRIVILEGE!

This is perhaps the most insidious aspect of the "need for licensing." A common-law state citizen who has been forced to obtain a license, is forced to operate under a "privilege" with all its attendant waivers of constitutional guarantees. To wit, gives the State power of attorney over himself, gives up the right to privacy, and it is used by the Federal and State Revenue authorities as proof for the status of "Resident" 14th Amendment citizenship.

S U R R E N D E R O F R I G H T S

> **"The only limitations found restricting the right of the state to condition the use of the public highways as a means of vehicular transportation FOR COMPENSATION are (1) that the state MUST NOT exact of those it permits to use the highways for hauling FOR GAIN that they shall SURRENDER ANY OF THEIR INHERENT U.S. CONSTITUTIONAL RIGHTS as a condition precedent to obtaining permission for such use ..." (emph. added).**
>
> **RILEY v LAWSON, 143 SO. 619;**
> **STEPHENSON v BINFORD, 287 US 251;**
> **87 ALR 721, 736.**

If a common-law Citizen who is exercising a "privilege" cannot be forced to surrender RIGHTS, how much more must this doctrine be applied to one who is exercising the very RIGHT which the legislature has attempted to make the citizen, give up?

> **"That statutes which would deprive a citizen of the rights of person or property, WITHOUT A REGULAR TRAIL, according to the course and usage of the common law, would not be the law of the land." (emph. added)**
>
> **HOKE v HENDERSON, 15 N.C. 15.**

In this question of "regulation," it is necessary to delve into the question of what is a "regulation" as compared to a "prohibition."

> **PROHIBITION -- Forbidden to do: ...**
>
> **BOUVIER'S LAW DICTIONARY (1914) P. 2739**

A prohibition forbids one to do a thing. On the other hand, a regulation allows the act to occur, but regulates how it is occur. The operational effect is that one must give up his RIGHT to travel upon the public highways, in the ordinary course of life and business, in order to exercise the LIBERTY guaranteed by the STATE Constitution.

Since this is the operational effect of this statute, this "regulation"

cannot stand under the POLICE POWER, as a "REGULATION," nor can it fulfill the requirements of "DUE PROCESS OF LAW." This is an ARBITRARY DEPRIVATION of the RIGHT to travel and is in fact, a taxing statute. The word "privilege," as used in this context, is a judicial invention used by the lower Courts to side-step the issue of taxing a right!

T A X I N G P O W E R

Any claim that this statute is a taxing statute would be immediately open to severe constitutional objections. If it could be said that the State had the power to tax a RIGHT, then the State would have the power to DESTROY RIGHTS guaranteed by the STATE Constitution. The question as presented, is one of the State's power of taxing the RIGHT of transit by ordinary modes of travel and if this is a legitimate object of State taxation.

The views advanced herein are neither novel nor unsupported by authority. The question of the taxing power of the States has been repeatedly considered by the United State Supreme Court. The right of the States to impede or embarrass the Constitutional operations of the United States government OR THE RIGHTS THE STATE CITIZENS HOLD UNDER IT, have been uniformly denied.

> **"A state MAY NOT impose a charge for the enjoyment of a right granted (sic) by the Federal Constitution."**

MURDOCK v PENNSYLVANIA, 319 US 105.

"... THE POWER TO TAX INVOLVES THE POWER TO DESTROY."

McCULLOUGH v MARYLAND, 4 Wheat 316.

If the States were to be given the power to destroy rights through taxation, then the framers of our US Constitution wrote the Constitution in vain.

> **"... it may be said that a tax of one dollar for passing the state ... cannot sensibly affect any function of government OR DEPRIVE A CITIZEN OF ANY VALUABLE RIGHT. But if a state can tax ... a passenger one dollar, it can tax him one thousand dollars."**
>
> **"If the right of passing through a state by a citizen of the United States is one guaranteed by the Constitution, IT MUST BE SACRED FROM TAXATION. (emph. added)**
>
> **CRANDELL v NEVADA, 6 Wall 35, 46 (1867).**

> **"The tax imposed by the (state) ... is a flat license tax, the payment of which is a condition of the exercise of these constitutional rights to (locomotion and travel) . ... The power to tax the exercise of a (right) ... is the power to control or suppress its enjoyment. (MAGNANO CO. v HAMILTON, 292 US 40, 44-45, and cases cited). Those who can tax the exercise of this right (to travel) ... can make its exercise so costly as to deprive it (from the indigent citizen). ... THOSE WHO CAN TAX THE (right to travel) ... CAN CLOSE THE DOORS TO ALL THOSE WHO DO NOT HAVE A FULL PURSE. (emph. added)**
>
> **MURDOCK v PENNSYLVANIA, supra at 112. (Compare CRANDELL v NEVADA, supra).**

Therefore, the RIGHT of travel must be kept "sacred" from all forms of taxation. A citizen CANNOT be charged a "tax" for the Right of traveling upon the highways.

Furthermore, the authorities unanimously define a "license fee" as a charge not unreasonably related to the administration of the "license." It must "bear reasonable relationship to the cost of regulation and administration" (GREAT PLAINS RESOURCES v CITY OF BENTON, 474 NYS.2d 376) or it is deemed arbitrary and unreasonable as a matter of law.

Public record will plainly show that the State of Washington nets approximately 23 MILLION dollars a year in "license fees" which go to various funds (not all related to licensing). This figure does not include the "privilege" or "excise tax" levied upon the vehicle license plates every year and therefore we have MILLIONS OF DOLLARS collected by the State which is no more than a "TAX UPON THE RIGHT OF TRAVEL."

This tax is not a charge for the enjoyment of a privilege or a benefit bestowed by the State. The Right of liberty and travel (as has been previously shown) exists apart from State authority.

C O N V E R S I O N O F A R I G H T T O A C R I M E

As previously demonstrated, this Court has declared that the citizen has a COMMON RIGHT to travel and transport their property upon the public highways by the everyday mode of locomotion in the ordinary course of life and business.

However, if one exercises this RIGHT (without first waiving the right and converting it to a privilege), the citizen is (by statute) guilty of a crime where the statute only applies to "residents." This amounts to the conversion of a RIGHT to a crime! This action by the legislature presents serious constitutional questions, as:

> **"The claim and exercise of a constitutional right CANNOT BE CONVERTED INTO A CRIME."**
>
> **MILLER v US, 230 F. 486, 489.**

> **"The state CANNOT diminish RIGHTS of the PEOPLE."**
>
> **HURTADO v CALIFORNIA, 110 US 516.**

> **"Where Rights secured by the Constitution are involved, there can be NO RULE-MAKING or LEGISLATION which would abrogate them."**
>
> **MIRANDA v ARIZONA, supra.**

So we can see that any attempt (by the legislature) to convert the exercising a RIGHT to a crime, is VOID UPON ITS FACE!

It is a fundamental rule of law that a RIGHT cannot be converted into a crime by the legislature. If the legislature has the power to convert a RIGHT into a crime, our Constitutions would be a futile effort to limit a government, which by its very power, could not be limited. Any RIGHTS that the people

reserved unto themselves could be done away with by the legislature by simply making the exercise of said rights into a crime. This is absurd on its face!

The legislature has no power to make the exercise of a right by a State Citizen a crime, then the legislature cannot demand a license for the exercise of said right:

> **"A license ... is no more than a temporary permit to do that which would otherwise BE UNLAWFUL ..." (emph. mine)**
>
> **RAWSON v DEPT OF LICENSES, 15 Wn.2d 364, 371 (1942).**

T H E S T A T U T E

We turn now to the statutes themselves as they hold a few surprises for the sovereign State Citizen.

The legislature obviously recognized a few boundaries which its power could not reach.

> **"ANY RESIDENT ... whose driver's license OR RIGHT or privilege ... has been suspended ...**
>
> **RCW 46.20.420.**

In order for a Citizen to have a RIGHT suspended, he or she must first have the RIGHT to suspend! This statute signifies that the legislature of the State of Washington recognizes the RIGHT of the People to use their public highways in, at least, some respect. Although they stated that the statute was to be liberally construed to effectuate the purpose of improving the safety of our highways, the legislature limited the statute to that of the TRADITIONAL FREEDOMS that every motorist is entitled.

We have shown that, TRADITIONALLY, citizens have had the RIGHT to drive their own private automobiles on the public highways for their own private business. Furthermore, we have shown that the FREEDOM, which every motorist is entitled to, also includes the RIGHT to travel upon our highways.

O T H E R C O N S T I T U T I N A L A R G U M E N T S

R I G H T T O W O R K

Plaintiffs' Rights to labor in common occupations of life are personal property rights and a LIBERTY which is protected by the Constitution of the United States. These rights are well established in history of protection by the Courts.

"The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase "pursuit of happiness" in the Declaration of Independence."

BUTCHERS UNION CO. v CRECENT CITY CO., 111 US 746, 762, 28 L.ED 588, 4 S.Ct. 652 (1884).

"Included in the right to personal liberty and the right of private property-partaking of the nature of each is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."

COPPAGE v STATE OF KANSAS, 59 L.Ed. 441, 35 S. Ct 240 (1914).

"Life liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may extinguish or lesson the value of the other three. In so far as a man is deprived of the Right to labor, his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than just freedom from servitude, and the Constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."

SMITH v TEXAS, 233 US 630, 636, 58 L. Ed 1129 (1913).

"It may be stated, as a general principle of law, that it is for the legislature to determine whether the conditions exist which warrant the exercise of this power; but the question as to what are the subjects of its exercise, is clearly a judicial question. One may be deprived of his liberty, and his constitutional rights thereto may be violated, without the actual imprisonment or restraint of his person. LIBERTY, in its broad sense, as understood in this country, means the RIGHT, not only the freedom from actual servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful calling, and to pursue any lawful trade or

avocation. ALL LAWS, therefore, WHICH IMPAIR OR TRAMMEL THESE RIGHTS which limit him in his choice of a trade or profession ARE INFRINGEMENTS UPON HIS FUNDAMENTAL RIGHT TO LIBERTY, WHICH ARE UNDER CONSTITUTIONAL PROTECTION." (emph. added)

IN RE AUBREY, 36 Wn. 308, 314, 315, 78 P. 900 (1915).

"The right to earn a living by working for wages is not a "substantive privilege granted by the state." It is, a described by the Supreme Court of Wyoming:" ... one of those inalienable rights covered by the statements in the Declaration of Independence and secured to all those living under our form of government, by the liberty, property, and happiness clauses of the national and state constitutions."

STATE v SHERIDAN, 25 WYO. 347, 357;
1 ALR 955;
CARY v BELLINGHAM, 41 Wn.2d 468, 472,
250 P.2d 114 (1952).

The State is a third person, imposing its will over the State Citizen's freedom to seek and secure gainful employment by conditioning the Citizen's rights to travel with "licenses." For the State to infringe upon Plaintiff's personal mode of travel is to interfere with his Right to contract for labor and to labor where he chooses.

To vindicate the obvious is often as difficult as to elucidate the obscure. It needs no argument to demonstrate that the wage earner, in following the common occupations of life, has the natural and common right to use the public streets and roadways freely in the usual and customary manner to transport himself to and from his abode and place of personal employment is properly excluded from that class of persons using the streets as a place of business for private gain (Compare CARY v BELLINGHAM, 41 Wn.2d 468, 471; 250 P.2d 114).

"The word "LIBERTY" as used in the due process clauses, includes, among other things, the liberty of the citizen to pursue any livelihood or lawful occupation AS A FUNDAMENTAL RIGHT PROTECTED BY THE CONSTITUTION, and many authorities consider the preservation of

such right to be one of the INHERENT OR INALIENABLE RIGHTS PROTECTED BY THE CONSTITUTION. Likewise, the courts have recognized that the right to follow a chosen profession FREE FROM UNREASONABLE GOVERNMENTAL INTERFERENCE comes within the "liberty" (and property) concept of the Fifth Amendment." (emph. added)

16 Am Jur 2d Sec. 562.

True! The statutes complained of do not directly deny Plaintiffs' Right to work. But we are dealing with the effect of the statute in which the Plaintiffs are to be forced out of their vocations simply because they refuse to license their Right to travel. If the legislature is allowed (on the basis of no licenses) to prohibit the Plaintiff's use of the highways, the legislature has effectively denied the Plaintiff's of their inalienable Rights to follow the common occupations of life, and their Rights to make and execute contracts for their labor and services at places away from their homes. Such a condition is repugnant to the Constitutions of the United States and Washington and denies Plaintiffs of their right to work, without due process of law.

"We find it intolerable that one constitutional right should have to be surrendered in order to assert another."

SIMMONS v US, 390 US 389 (1968).

The statutes impose a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is protected by the Washington Constitution.

Accordingly, they restrain in advance the constitutional liberty of locomotion and travel and, inevitably, tend to suppress their exercise. If the Plaintiffs cannot afford the price of the "privilege license," they (by statute) are prohibited from using the public streets and highways.

> **"No person ... shall drive any motor vehicle upon a highway in this state unless such a person has a valid driver's license. ... Violation of this section is a misdemeanor."**
>
> **RCW 46.20.021.**

Inasmuch as freedom of assembly for religious worship and fellowship depends upon the freedom of travel, for the legislature to abrogate Plaintiffs' Rights to the free exercise of their religious activities for the price of a "privilege license" is to deprive Plaintiffs of a substantial Constitutional Liberty without due process of law and equal protection of the law as protected by the US Constitution and the Washington State Constitution (Article 1, Sections 3, 4, 11 and 12).

Furthermore, if the legislature has the power to charge the Plaintiffs $14.00 for a "privilege license" this year, the legislature can charge $1400.00 for the same "privilege license" next year. (compare CRANDELL v NEVADA, supra).

The right of free exercise of Religion and of Liberty (locomotion) exists

apart from State authority.

> **"This is not a charge for the enjoyment of a "privilege" or benefit bestowed by the state. (These Rights) are guaranteed the PEOPLE by the US Constitution."**
>
> **MURDOCK, supra at 115.**

> **"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution."**
>
> **MURDOCK, supra, at 113.**

Moreover, to allow the legislature to compel every traveler upon the highways of the State to procure licenses, the legislature would have the power to arbitrarily prohibit the Plaintiff's use of the highways. The end effect will be the legislature will require the Sovereign Citizen to please the State before the Citizen may practice his religious beliefs. (see also RAWSON v DEPARTMENT OF LICENSES, supra at 371-372).

If the legislature is allowed to prohibit Plaintiff's right to use the public streets and highways simply because they have not bought and paid for the "privilege" of using the streets (or because they have different religious beliefs); then the State has effectively abrogated Plaintiff's Right to the free exercise of their religious beliefs.

Wherein some of the above named Plaintiffs have been jailed and/or fined for the exercise of their liberty to travel upon the public highways, this then

is prima facia evidence of the penalty all the above named Plaintiffs will suffer in the exercise of their Constitutionally guaranteed rights (including their Right to travel in pursuit of their free exercise of religion).

Proof is not lacking that these statutes have restricted (or are likely to restrict) Plaintiffs' religious activities.

> **"We find it intolerable that one constitutional right should have to be surrendered in order to assert another"**
>
> **SIMMONS v us, supra.**

R I G H T T O L I F E, L I B E R T Y, A N D P U R S U I T O F H A P P I N E S S

Under the doctrine of RCW 46.20.021, the legislature claims that Plaintiffs are required to purchase the "privilege" of using the streets and highways. It then follows that the Sovereign Citizen, who is a pauper and unable to pay for this "privilege," is confined to his home where he and his family must DIE of any ailment, disease, or injury, that under proper medical attention could have been healed or cured.

Is DEATH the final penalty which the legislature will exact from the Sovereign Citizen in exchange for his/her Constitutionally guaranteed liberty to travel? Apparently so - for under these statutes, the legislature may penalize and/or prohibit the Plaintiff's common RIGHT to use the public highways for seeking medical attention where said attention is available.

Furthermore, if these statutes can deny the Sovereign Citizen the use of the public highways for want of a "full purse," then the legislature has the power to deprived the pauper of the Right and responsibility of tending to the health and welfare of his family.

> **"We find it intolerable that one constitutional right should have to be surrendered in order to assert another."**
>
> **SIMMONS v US, supra.**

R I G H T T O P R I V A C Y

The right of privacy, as an independent and distinctive legal concept, has two main aspects:

(1) the general law of privacy, which affords a tort action for damages resulting from an unlawful invasion of privacy, and

(2) THE CONSTITUTION RIGHT OF PRIVACY WHICH PROTECTS PERSONAL PRIVACY

AGAINST UNLAWFUL GOVERNMENT INVASION.

While the Federal Constitution does not explicitly mention any Right of Privacy, the Supreme Court of the United States has declared that THE RIGHT OF PRIVACY IS A FUNDAMENTAL RIGHT GUARANTEED BY THE FEDERAL CONSTITUTION. This declaration was adopted by Congress when it enacted the Privacy Act of l974. The Constitutionally protected right of privacy has been described by the Supreme Court as THE RIGHT TO BE LET ALONE." (16A Am Jur Section 601).

> **"... we are of the opinion that there is a CLEAR DISTINCTION ... between an individual and a corporation. ... THE INDIVIDUAL MAY STAND UPON HIS CONSTITUTIONAL RIGHTS AS A CITIZEN. He is entitled to carry on his private business in his own way. His power to contract is unlimited. HE OWES NO DUTY TO THE STATE or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may incriminate him. HE OWES NO SUCH DUTY TO THE STATE, SINCE HER RECEIVES NOTHING THEREFROM, beyond the protection of his life and property. HIS RIGHTS ARE AS EXISTED BY THE LAW AND CAN ONLY BE TAKEN AWAY FROM HIM BY DUE PROCESS OF LAW, AND IN ACCORDANCE WITH THE CONSTITUTION ... HE OWES NOTHING TO THE PUBLIC SO LONG AS HE DOES NOT TRESPASS UPON THEIR RIGHTS." (emph. added)**
>
> **HALE v HENKEL, 201 US 43, 74 (1906).**

Since a natural citizen "owes no duty to the state," the legislature cannot compel any specific performance (driver's license) from him/her in the exercise of his right to travel, for to require such performance abrogates the Right without due process of law.

Further, to compel the Plaintiffs to procure a driver's license, requires the Plaintiffs to waive their RIGHT TO PRIVACY. Before a driver's (privilege) license to be issued, the statutes require specific personal and private information about the Plaintiffs.

> **"The department shall ... issue to every applicant qualifying therefore a driver's license, which license shall bear ... THE FULL NAME, DATE OF BIRTH, RESIDENCE ADDRESS, AND A BRIEF DESCRIPTION OF THE LICENSEE, AND ... THE SIGNATURE OF THE LICENSEE an/or a space upon which the licensee SHALL WRITE HIS USUAL SIGNATURE with pen and ink immediately upon receipt of the license." (emph. added)**
>
> **RCW 46.20.161**

Some of the above named Plaintiffs did not, upon expiration of their driver's licenses, seek to renew their previous grants of a privilege to use the public highways as a place of business.

These Plaintiffs deny that the legislature has any compelling interest requiring the Plaintiffs to divulge their personal identity and address to the State. To require Plaintiffs to waive their right of privacy to exercise their right of travel is to require the Plaintiffs to give up one right in order to exercise another and that requirement is tantamount to abrogating Plaintiffs' right of privacy without due process of law.

> **"We find it intolerable that one constitutional right should have to be surrendered in order to assert another."**
>
> **SIMMONS v US, supra.**

R I G H T T O C O M M O N LAW

> **The power of citizenship as a shield against oppression was widely known from the example of Paul's Roman Citizenship, which sent the centurion scurrying to his higher-ups with the message: "Take heed what thou doest: for this man is a Roman."**

I suppose none of us doubts that the hope of imparting to American Citizenship some of this vitality was the purpose of declaring in the Fourteenth Amendment:

> **"All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGES THE PRIVILEGES OR IMMUNITIES OF THE CITIZENS OF THE UNITED STATES ..." (emph. added)**
>
> **EDWARDS v CALIFORNIA, 314, US 160, 182 (1941).**

These Plaintiffs hereby lay claim to the absolute inalienable rights as to heritage, of Life, Liberty, and the pursuit of happiness - that is, the claim of unrestricted action except so far as the claim of others necessitates restriction and the right to protection from government usurpation of our rights under the SUBSTANTIVE COMMON LAW.

The controlling principle at the Common Law is that no man may order the Life, actions, and decisions of another. Each individual must have the right to choose his acts, being answerable to his CREATOR for his actions.

The Common Law provides protection of all Citizen's independent action in all ways, unless there is a responsible swearing to an allegation that one is the probable cause of damage to another's property, injury to another person, or infringement upon another's rights.

> **"The PROVISIONS OF THE COMMON LAW relating to the commission of a crime and punishment thereof, insofar as not inconsistent with the Constitution and the statutes of this state, SHALL SUPPLEMENT ALL PENAL STATUTES OF THIS STATE ..." (emph. added)**
>
> **RCW 9A.04.060.**

Penal statutes are essentially those actions which impose a penalty or punishment arbitrarily extracted for some act or the omission thereof on the part of some person (See Black's Law Dictionary, 5th ed. at 1019). The licensing or permit statutes of this State require a specific performance. Said statutes operate to compel a performance (see Black's Law Dict., Pg. 1020) and inflict a penalty for its violation (see STRATHAIRLY, 124 US 571). Beyond requiring specific performance, the licensing provisions ask for something more; the statutes require a signature and that is something the Plaintiffs object to because it is contractual in nature and constitutes a presumed jurisdiction.

To compel a Sovereign citizen into a jurisdiction other than the Common Law is to deny him his birthright under the US Constitution and the Washington State Constitution. In effect, the Plaintiffs are denied

due process of law.

> **"We find it intolerable that one constitutional right should have to be surrendered in order to assert another."**
>
> **SIMMONS v US, supra.**

C O N C L U S I O N

The People of America are slow to anger and will withstand oppression for a long period of time before they awake from their slumber and claim what is RIGHTFULLY theirs. Once awakened, however, the People of America are a "determined" People who will strive for freedom until they are either dead or imprisoned in martyrdom. These Plaintiffs ARE "awakened" American and are striving for FREEDOM from Legislative oppression.

Driving upon the public highways, is a liberty within the protection of the United States Constitution and the RIGHT to drive an automobile cannot be revoked without due process of law (BERBERIAN v LUSSIER, 87 R.I. 226, 231, 139 A. 2d 869 [1958]).

There is a FUNDAMENTAL DISTINCTION between the ordinary RIGHT of the citizen to use the streets, and the use of the streets as a place of business

(HADFIELD v LUNDIN, 98 Wn.657, 168 P. 516). The use of the road by the common citizen in the usual manner is a COMMON RIGHT, A RIGHT COMMON TO ALL (HADFIELD, supra; STATE v CITY OF SPOKANE, 109 Wn. 360, 186 P 8640).

This COMMON RIGHT of the citizen DIFFERS OBVIOUSLY AND RADICALLY from one who makes the highways his place of business (STATE v CITY OF SPOKANE, 109 Wn. 360, 186 P. 864). The use of the streets for travel and transportation is NOT A MERE PRIVILEGE, BUT A COMMON AND FUNDAMENTAL RIGHT (CHICAGO MOTOR COACH v CHICAGO, 337 Ill. 200, 169 NE 22, 66 ALR 834).

This RIGHT includes the Right to use an AUTOMOBILE upon the public highways (THOMPSON v SMITH, 155 Va. 367, 154 SE 579, 71 ALR 604; TECHE LINES v DANFORTH, 12 So. 2d 784).

Where rights secured by the US Constitution are involved, there can be NO LEGISLATION which would have the effect of canceling the right (MIRANDA v ARIZONA, 384 US 436). Further, the Legislative branch of government CANNOT convert such a right to a crime (MILLER v US, 230 F. 486).

This Court has consistently upheld the RIGHT of the citizen to drive upon our highways in the usual course of life and business (HADFIELD, and STATE v CITY OF SPOKANE, and others, supra).

The State does have the power to "regulate" this RIGHT but does not have the power to "prohibit" this RIGHT by conditioning the exercise upon the

payment of money (MURDOCK v PENNSYLVANIA, 319 US 105, 113). The State can regulate this RIGHT by reasonable REGULATION (BERBERIAN v LUSIER, supra). The statute RCW 46.020.021 is a PROHIBITION of a RIGHT to drive!

F I N A L N O T E

> "The courts are not bound by mere form, nor are they to be misled by PRETENSES. They are at liberty -- indeed are under a SOLEMN DUTY -- to look at the substance of things whenever, they enter upon the inquiry whether the legislature has transcended the limit of it's authority. If therefore, a statute purporting to have been enacted to protect ... the public safety, has no real or substantial relation to those objects, OR IS A PALPABLE INVASION OF RIGHTS SECURED BY THE FUNDAMENTAL LAW, it is the DUTY of the courts to so adjudge, and thereby give effect to the Constitution." (emph. added)
>
> MUGLER v KANSAS, 123, US 623, 661.

> "IT IS THE DUTY OF THE COURTS TO BE WATCHFUL FOR THE CONSTITUTIONAL RIGHTS OF THE CITIZENS, AND AGAINST ANY STEALTHY ENCROACHMENTS THEREON." (emph. added)
>
> BOYD v US, 116 US 616 (1886).

We have presented one of the most "STEALTHY ENCROACHMENTS" upon our RIGHTS that has ever been uncovered by WE THE PEOPLE. There can be no doubt that this denial of the rights of the People has come about by a steady, slow, move by the combined efforts of the lower Courts and the legislature.

The history of this "invasion" is now complete with the ruling in CITY OF SPOKANE v PORT, supra. All That is required now, is for the SOVEREIGN CITIZEN, to acquiesce to the usurpation of power which has been accomplished by and through the legislature and the Court of Appeals, Division III, of Washington State.

The distinction between a citizen's right to use the highways in the usual way and the use of the streets for the purpose of business for gain, is clearly made by the Courts. In other words, the Courts have already determined that the status of the Plaintiffs dictates to the legislature that they should be treated in a manner which is different than those who would use the highways as a place for business.

THEREFORE, WE THE ABOVE SIGNED PLAINTIFFS, now invoke the original jurisdiction of this SUPREME COURT, and pray that this HONORABLE COURT will issue a Writ of Prohibition and/or a Restraining Order and/or an Injunction for the purpose of protecting this MOST SACRED OF LIBERTIES from complete extinction by and through the conspiracies of our public servants.

Dated this _____ day of _____, 1999

_____

(Signature)