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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1969

----- X		
WILLIE E. WILLIAMS,	:	
	:	
Petitioner;	:	
	:	
vs.	:	No. 1089
	:	
STATE OF ILLINOIS,	:	
	:	
Respondent.	:	
----- X	:	

Washington, D. C.
April 22, 1970

The above-entitled matter came on for argument at
10:49 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice
 HUGO L. BLACK, Associate Justice
 WILLIAM O. DOUGLAS, Associate Justice
 JOHN M. HARLAN, Associate Justice
 WILLIAM J. BRENNAN, JR., Associate Justice
 POTTER STEWART, Associate Justice
 BYRON R. WHITE, Associate Justice
 THURGOOD MARSHALL, Associate Justice

APPEARANCES:

Stanley A. Bass, Esq.
 Community Legal Counsel
 116 South Michigan Avenue
 Chicago, Illinois
 Attorney for petitioner

James R. Thompson,
 Assistant Attorney General
 State of Illinois
 188 West Randolph Street,
 Chicago, Illinois 60601
 Attorney for Respondent

1 pro se; there was no court reporter present. The record shows
2 that the defendant waived his right to jury trial. The case
3 was tried before the judge without a jury.

4 A finding of guilty was made, and the maximum
5 sentence of 1 year plus a \$500 was imposed. Five dollars cost
6 was also made part of the judgment. And the judgment further
7 ordered that the defendant stand committed in jail if he would
8 default in payment of the fine and costs.

9 Sometime afterward the defendant contacted the
10 Civil Legal Aid Service in the jail. And a petition was presen-
11 ted to the sentencing judge on November of 1967, which prayed
12 that the portion of the sentencing order of September 6 --
13 which directed that the defendant stand committed in default
14 of payment of the fine and costs -- be vacated. It further
15 prayed that the defendant be granted sufficient time in which
16 to obtain the funds with which to pay the fine and costs; and
17 further asked for such other relief that may be just and appro-
18 priate.

19 The petition was made under oath and contained some
20 of the following allegations: The defendant was indigent, an
21 inmate of the county jail; he had no funds, no valuable
22 property. He had been unable to post bail; he lacked the \$200
23 with which to post the 10 per cent under Illinois law. He
24 was unable to hire an attorney; and that then he was unable to
25 pay the fine and costs.

1 And it further alleged that if the defendant were
2 released from jail upon the expiration of the one year jail
3 sentence, he would be able to get a job and earn the funds
4 to pay the fine and costs.

5 The state did not contravene the factual allegations
6 but moved to dismiss. The lower court dismissed the petition
7 without evidentiary hearing, and then the appeal was taken to
8 the Illinois Supreme Court.

9 The Illinois Supreme Court held that there is no
10 denial of equal protection of the law when an indigent
11 defendant is imprisoned to satisfy payment of his fine. The
12 Illinois Supreme Court granted a stay pending appeal and
13 furthered stayed the mandate pending appeal to this Court.

14 It should be noted in the outset what is not challen-
15 ged in this case. We do not challenge the practice of
16 incarcerating a contumacious defendant who refuses to pay
17 the fine. Nor do we attack the discretion of the sentencing
18 judges who wish to make the punishment fit the defendant. Nor
19 do we attack the defendant's obligation to pay that debt.

20 Q What was the total sentence that resulted from
21 the application of this statute?

22 A The total sentence would be one year plus the
23 101 days which would be \$505 at the rate of \$5 a day.

24 Q A year and 3 months?

25 A About a year and 3 months, yes. It was diminished

1 slightly by good time credit.

2 Q Do you think it could be successfully contended
3 that in light of that and the fact, which seems to be shown by
4 the record, that this man was unrepresented by counsel, that
5 his rights under Gideon and Wainwright were violated?

6 A That is a possible question. We did not urge
7 the right to counsel question for a number of reasons. The
8 first reason is that it was doubtful whether or not the defend-
9 ant would succeed in that, because under Illinois law the right
10 to counsel depends upon a request for counsel.

11 Secondly, the possibility was substantial that if
12 there had been a retrial, there would have been a reconviction
13 with the same sentence, which would have only resulted in the
14 issue coming up at a later stage and, possibly, the defendant
15 spending more time in jail than he did with respect to this
16 case.

17 Q What was the maximum sentence which could have
18 been imposed?

19 A The maximum sentence that could be imposed for
20 theft of property, not from the person and not exceeding \$150
21 in value, was one year plus a \$500 fine. If the person commits
22 a subsequent offense, it is a felony of 1 to 5 years. If he
23 commits a theft of property from the person or exceeding a \$150
24 in value ---

25 Q Which classification did this crime come in?

1 A This came in the lowest one, misdemeanor of one
2 year plus \$500.

3 Q Only one year?

4 A Yes, sir.

5 Q I am sorry, I didn't catch that. How long did
6 you say he had actually been in prison under this sentence?

7 A How long would he actually ---

8 Q No, how long has he in fact been?

9 A Well, he was bailed out after serving 5 days of
10 the fine.

11 Q Had he served the sentence at trial?

12 A He had served the full sentence, and at the
13 conclusion of the sentence, he asked for bail in the Illinois
14 Supreme Court 5 days after he began serving ---

15 Q How long was he actually in jail?

16 A I think he received approximately 84 days, which
17 was the normal good time credit, so it would be a year plus 5
18 days minus 84, which would be the period from August of 1967 to
19 May of 1968; about 9 months.

20 What we do challenge in this case is the construction
21 of the statute by the Illinois Supreme Court which authorizes
22 24 hour a day imprisonment over the maximum at the rate of \$5
23 a day, despite the fact that the defendant has said, without
24 any opposition by the state, that he will go out and get a job
25 and earn the funds to pay his fine if he is given the

1 opportunity.

2 The state has indicated that it has 2 primary goals
3 to be served. The practice of incarceration of indigents
4 should be sustained because of those goals. Those are:
5 deterrence of crime and collection of revenue from the fines.

6 However, examination reveals that around the clock
7 imprisonment of an indigent under these circumstances is neither
8 necessary nor rationally related to these stated goals. And
9 there are clearly less onerous alternatives and, perhaps, more
10 effective ones to satisfy the state's interests.

11 Certainly if the state's interest is in the collecting
12 of revenue, on remitting the person to jail, they are not
13 going to get the money and, in addition, the state has to pay
14 substantial amounts of money to house prisoners in an already
15 overburdened and overcrowded facilities.

16 Q Could the state insist that he pay the fine by
17 working for the state? Say in a work house or in a work farm
18 or something like that?

19 A It is our position that the state could certainly
20 do that as long as they let him go at night. In our hierarchy
21 of alternatives that we have suggested, we have placed
22 remitting to the work house as one of the possibilities. But
23 the problem in this case is that they keep the man in jail
24 around the clock. And there is absolutely no justification
25 for incarcerating somebody at night merely because they are

1 extracting his day labors.

2 Q Do you think the Supreme Court of Illinois had
3 judicial power to shape that kind of solution to the problem?

4 A We feel the Illinois Supreme Court could easily
5 have saved the statute by construction. For example, the
6 first sentence in the statute talks in terms of a judgment of
7 a fine imposed upon a defendant may be enforced in the same
8 manner as a judgment in a civil action.

9 Just last November the Illinois Supreme Court held in
10 a civil case that you could not obtain a body execution --
11 that is jail -- as a civil debt, absence showing a refusal
12 to pay. That is the Lawyers Title of Phoenix vs. Gerber which
13 we cite in footnote 19 on page 22.

14 Q Was that done in the context of the old notions
15 of imprisonment for debt?

16 A No. The Illinois Supreme Court does not treat
17 imprisonment as a result of a conviction as a debt which is
18 considered in that prohibition. But if the Illinois Supreme
19 Court had construed the section to require resort to the other
20 alternatives before remitting the person immediately, the
21 Illinois Supreme Court could have avoided the constitutional
22 infirmity in this case.

23 Q Then you don't complain about the rate of the
24 workout, that is the \$5 a day, if he goes home at night? Is
25 that it?

1 A If he goes home at night. I think there may be
2 some question about whether or not \$5 a day comports with
3 a reasonable rate. Certainly ---

4 Q Are you raising that here or not?

5 A We do raise it, but what we have in this case is
6 \$5 a day, not for the work day, but for the pleasure of his
7 company during the night as well. Under those circumstances
8 that is, certainly, not compensatory. It is certainly unjust
9 compensation for not only taking his labors during the day
10 but having him around at night, too, against his will.

11 Q But you don't consider the compelled presence
12 and performance of work during the daytime hours as a form of
13 incarceration?

14 A Well, we had originally suggested that the
15 alternative of allowing the man to go out on his own is to
16 be preferred. But, we are willing to acknowledge that there
17 may be situations where a person is unable to get a job,
18 where the state is unable to get a job for him through an
19 employment service, and, as a last resort, the state might want
20 to give him the public works job. They could make him work
21 in a hospital or a boys' club or at the work farm. But our point
22 is that what the state has done is much more onerous here.

23 Q Suppose this was a civil case and he had costs,
24 what does Illinois do?

25 A Illinois does not imprison for non-payment of

1 costs in a civil case. It clearly has an irrational discrim-
2 ination here. One can hardly think that costs are necessary
3 to enforce the criminal law.

4 Q You were suggesting, I take it, just a moment
5 ago there were circumstances under which the state could keep
6 the man in jail around the clock, weren't you?

7 A I wasn't suggesting that, but I can envision the
8 possibility where, after an adequate inquiry is made, it is
9 determined that there is very real probability that if they
10 let him out to go to the job during the day, they will never
11 see him again.

12 Q Let's assume he refuses to work.

13 A If he refuses to work?

14 Q Yes.

15 A That may well be the contumacious type of
16 conduct that would lead to remitting to incarceration.

17 Q And as a substitute for the fine?

18 A Not as a substitute for a fine but as a means
19 of collection, as a means of ---

20 Q Your position is if all you want from him is
21 money, you ought to limit your remedy to that as long as you
22 think you can get it, as long as there is some chance of
23 getting it. But now, what if there is no chance of getting it?

24 A The state can provide the job. If he absolutely
25 sits down ---

1 Q What if he just won't work?

2 A Well, if he absolutely refuses to work, that
3 is contumacious conduct; that is a complete refusal to be
4 cooperative.

5 Q Then what can the state do?

6 A Under those circumstances the state might do
7 what it does with respect to a person who has the funds and
8 that is say, "You sit unless you work or pay."

9 Q Is there a separate proceeding for that to
10 determine the factual ---

11 A Not under the Illinois statute. That is the
12 problem. No provision is made for any kind of inquiry or
13 hearing or factual evidence to determine whether or not the
14 defendant is refusing to pay or refusing to work or refusing
15 to comply with his obligations ---

16 Q Well, would you say that the state, in order
17 to satisfy its obligation with all these, before it could
18 incarcerate a man 24 hours a day, it would have to offer him
19 work?

20 A Well, our position is that ---

21 Q Furnish work by the state?

22 A Our position is that where liberty is involved
23 that the state is obligated to utilize alternatives rather than
24 automatic remission to jail.

25 Q Yes, I understand, but how about that alternative?

1 Are they obligated to use that one, too?

2 A The alternatives that we would suggest would
3 be, first, straight installment payments. In an economy that
4 is based upon time payments, that is certainly not a strange
5 idea. Secondly, garnishment, that is, once he goes out to
6 automatically seize a portion. The third possibility is to
7 utilize the state employment service to find a job for him.
8 The last one would be to put him on the public works job,
9 whether that be out on the farm or out in the work house. That
10 is the last one.

11 Q What if no jobs are available in the community
12 that he can get. Must the state furnish him the opportunity
13 to work on its own pay roll?

14 A We think that it is unrealistic to think that
15 there is no work at all in this case, but if evidence did
16 show that it was impossible to place him anywhere, we think that
17 it would be permissible to require him to work at a
18 designated place ---

19 Q But the state says, "We don't want to; we would
20 rather put him in jail. We haven't got any place for him to
21 work."

22 A It is our position that the interests of
23 society do not justify such an onerous exaction, such an
24 imposition upon the liberty of the defendant. It is interesting
25 to note that the state which talks in terms of, "Are these

1 alternatives really administratively feasible?" The first
2 answer, of course, is that administrative convenience is not
3 a sufficient ground for such an onerous exaction. But the
4 second one is that Illinois, by passing a work release program,
5 has, itself, recognized that these alternatives are feasible.

6 Of course, there is one glaring defect in the Illi-
7 nois work release program as applied to the person who is
8 incarcerated for non-payment of fine. That is triple punish-
9 ment. The defendant is required to serve his year in jail,
10 pay his fine with the earnings he gets during the day, but
11 he sits in jail at night. There is absolutely no justification
12 why a person should have to sit in jail at night, when he is
13 out during the day working off his fine.

14 Q Is there anything in this record that shows
15 that his incarceration beyond a year is any different from a
16 man being sentenced to 2 years?

17 A If I understand your question, Mr Justice
18 Marshall ---

19 Q Well, for example, the release on work applies
20 to a man that is serving a sentence of just one year and
21 nothing else ---

22 A That is right; it applies to straight jail
23 sentences.

24 Q This is not just for people that are put in
25 because they couldn't pay a fine.

1 A That is correct.

2 Q So what is the basis of this argument? I
3 thought your argument was that putting him in jail beyond the
4 one year period, solely because he was broke, was unconstitu-
5 tional?

6 A Right. Let me explain that. With respect to
7 a person who is doing a straight jail sentence, he is certain-
8 ly receiving quite a benefit to be told that he can obtain
9 some liberty during the day, and he can hardly complain of
10 that. But the person who is being incarcerated for non-payment
11 of fine, the only interest that the state has is his money.
12 When they let him go out during the day to get that money,
13 they then have completely undermined that by saying that he
14 must come back to jail at night. There is no rational justi-
15 fication.

16 Q Getting back to this case, is he out or in?

17 A Williams?

18 Q Yes.

19 A He's out; he was bailed by the Illinois Supreme
20 Court.

21 Q He was bailed out?

22 A Yes.

23 Q So how does the work release program come up?
24 He might never qualify for it.

25 A As to Williams, of course, the work release

1 program was passed by the legislature effective January of 1969,
2 and all of Williams' proceedings occurred in 1967. I was
3 addressing myself to, in the event that it were applicable to
4 him or other persons similarly situated, what the effect would
5 be. And my point was that the work release statute shows that
6 the administrative convenience argument doesn't hold up, and,
7 secondly, that there is a glaring defect in it because it
8 requires nighttime incarceration for which there is no rational
9 justification.

10 Q Does it also require that he pay room and
11 board?

12 A It adds insult to injury by making him pay \$3.50
13 a day.

14 Q Perhaps you told us, but if so, I didn't get it
15 clearly: As I read Illinois Revised Statute 1967, Chapter 38,
16 Paragraph 180-6, its language would seem entirely to take care
17 of your claim. However, if I understand that it has been
18 construed by the Illinois courts in such a way as to mean
19 something other than what it seems rather clearly to say ---

20 A Well, we certainly thought the language of the
21 statute could be interpreted literally and would be granted
22 a discharge.

23 Q How have the Illinois courts construed it?

24 A They have construed the language until all
25 legal means have been exhausted to mean that the defendant

1 even must show he is physically unable to work -- which is
2 the gallstones case, People vs. Hedenberg -- or that no work
3 is provided for him. There is always housekeeping available.
4 In fact, the record shows -- the jail record of Williams is
5 included in here, on page 33 of the record -- and it does show
6 that when he was serving his jail time, he worked in the
7 laundry, and he worked in the tailor shop and he worked in
8 something beginning with "k" which I think is the kitchen. So
9 that all people that are in jail have the opportunity to work.
10 A person who is working off his fine is not going to be doing
11 anything differently.

12 The state has attempted to suggest that the policy of
13 deterrence requires the result reached in this case. We
14 dispute that contention for the following reasons: First,
15 the fact that Illinois is willing, under 180-6, to discharge
16 persons who are unable to work or for whom no work is
17 provided, is an indication that automatic incarceration of
18 everybody who won't pay fines is not necessary to the enforce-
19 ment of the criminal law.

20 We submit that the fine is, certainly, a different
21 order of punishment than a jail sentence. If the trial judge
22 wishes to individualize the sentence, impose a fine because he
23 feels that the interest of society requires no more than a
24 fine, it is inconsistent with that trial judge's determination
25 then to have the defendant sitting in jail.

1 Q Are you arguing this is an equal protection
2 matter or due process or both?

3 A There really is a blend of equal protection and
4 due process. Almost all of this Court's criminal ---

5 Q How would you define your equal protection
6 position? How do you frame it?

7 A We frame it in terms of the fact that the
8 indigent is required to spend more jail time than the person
9 with funds; the fact that the indigent defendant, despite his
10 willingness to work, is deprived of the opportunity to pay off a
11 fine but rather remitted to incarceration.

12 Q That is a consequence of the economic vicissi-
13 tudes that go with our kind of system of economy, I guess.

14 A There is more to it than that. There is a
15 due process aspect to this extent: That the state seems to
16 be conclusively presuming that incarceration is necessary
17 because the person might run away; he will run away from the
18 job and he won't be around to pay the fine. That type of
19 conclusive presumption, in the absence of any showing, any
20 hearing, any inquiry, certainly doesn't comport with fundamental
21 principles. So, to that extent, there is this blend of due
22 process into the equal protection.

23 The state's attempt to justify this 24 hour a day
24 incarceration for fear that some people might skip is not
25 based on any evidence. Certainly, not in this record, and I

1 take it that the state is arguing the broad proposition that
2 they are entitled to incarcerate somebody around the clock
3 in any case, regardless of the fact that the fellow may come in
4 and say, "Look I have a great possibility of getting a job. I
5 could earn enough funds in perhaps a week or two to pay off
6 this fine." And the state says it wants the revenue from
7 collecting these fines, and yet, the state does precisely the
8 opposite by incarcerating the person and depriving him of the
9 opportunity to go out to work.

10 Q Did you put any evidence in this case on what
11 the reasonable value of services would be in place of \$5 a day?

12 A No; there is no evidence in the record to that
13 effect.

14 Q In your judgment, as a constitutional matter,
15 would that have to be tailored to his capacities, or could
16 the Illinois Legislature fix some other figures such as \$16
17 a day or based on the minimum wage, which, I guess, is a \$1.60
18 times 8 hours?

19 A Clearly, the evaluation is a legislative matter.
20 However, there is a point when 24-hour incarceration for \$5
21 a day is so, obviously, unjust compensation as to render it
22 unconstitutional. Because we have to remember that the
23 defendant here is being kept for longer than the work day.

24 Q My problem with your argument, Counsel, is that
25 I can understand someone rationally fixing a rate for his

1 services; I have some difficulty seeing how you put a rate on
2 his liberty by the hour. You seem to imply that they might
3 rationally fix some x dollars per hour for depriving him of
4 his liberty. Where is your basis for doing that? How do you
5 measure the value of a man's freedom?

6 A It seems to me that the remission to incarceration
7 tion at a certain value is a last resort. It is our submission
8 in this case that the state should have done something before
9 they resort to that alternative, and the state didn't,
10 despite the fact the defendant said he could go get the money
11 on his own.

12 The state wouldn't have to keep him in jail to work
13 off the fine at whatever value they assign. He said that he
14 could go out and get that money. And the state, instead of
15 even inquiring into the credibility or the weight of those
16 contentions, which the state did not meet, simply denied the
17 petition without evidentiary hearing.

18 The Illinois Supreme Court, rather than adopt the type
19 of construction that could save the statute, simply said there
20 is no denial of equal protection when an indigent is required
21 to work off his fine.

22 The heart of this thing is that there is no equivalent
23 between the rich man's choice, that is whether or not he wants
24 to pay or sit in jail -- and there are some people that like
25 to do that -- and the exaction from the indigent, requiring

1 him to sit in jail. That is simply an inequality.

2 I would like to save a few minutes for rebuttal, if
3 I might.

4 MR. CHIEF JUSTICE BURGER: Thank you.

5 Mr. Thompson.

6 ARGUMENT OF JAMES R. THOMPSON

7 ON BEHALF OF RESPONDENT

8 MR. THOMPSON: Mr. Chief Justice and may it please the
9 Court:

10 In 1927 Justice Holmes referred to the equal protec-
11 tion clause as the last resort of constitutional arguments. A
12 reading of the opinions of this Court will show that we have
13 come quite a ways since that characterization. In fact, Judge
14 Skelly Wright of the United States Court of Appeals for the
15 District of Columbia referred to the equal protection clause
16 as the cutting edge of our expanding constitutional liberties.

17 One of the issues that is involved in this case
18 before the Court today is whether that cutting edge will press
19 so deeply, not only into the statutory scheme in the State of
20 Illinois, but the statutory scheme of the other American states
21 in the Federal Government, to compel those states and Federal
22 Government to adopt a system of criminal justice administration,
23 greatly different from that which they have adopted by the
24 legislative process, in the name of the explication of the
25 equal protection clause.

1 I think we should consider at the outset what some
2 of the interests are in considering the context or setting of
3 the equal protection argument in this case. As Mr. Justice
4 Brennan referred to it in the concurring opinion in *Allen vs.*
5 *Illinois* just some weeks ago, constitutional claims must be
6 considered in context. We think the context of the equal
7 protection claim here is an important one.

8 First, the history of incarceration to work off a
9 fine which cannot or will not be paid is an ancient one, far
10 outdating the American legal system. Mr. Justice Black said,
11 in his opinion for the Court in *Kotch vs. the Board of River*
12 *Pilots* some years ago and in his dissenting opinion in *Harper*
13 *vs. the Virginia Board of Elections*, the history of a practice
14 is important in considering whether or not that practice
15 violates the Federal Constitution.

16 Similarly the widespread usage of a particular
17 feature of a criminal justice system by the states and by the
18 Federal Government is also important in assessing its validity
19 under the Federal Constitution. As was noted for the Court in
20 the opinion in *Roth vs. the United States*, the fact that not
21 only did all American jurisdictions in the Federal Government
22 ban the dissemination of obscenity, but most of the civilized
23 nations of the world did it as well.

24 We think it is equally relevant then to consider in
25 the context of whether or not equal protection as been violated

1 here that all of the states of the federal union for years and
2 years and years, and the English Government before that, have
3 allowed the incarceration of those who cannot or will not
4 pay their fines until the fine is worked off.

5 The impact of this Court's holding that the Illinois
6 system is unconstitutional must also be considered, we believe,
7 for this Court to decide how far they will take the equal
8 protection clause. Because if the challenge to Illinois statute
9 is successful in this Court today, similar challenges will
10 follow: a challenge to the bail system, the claim that a
11 requirement of a monetary bail in any case is irrational if
12 other factors will show, or seek to persuade, that the defend-
13 ant will not flee.

14 Q How many states have got a statute similar to
15 the Illinois statute here? Or the Illinois statute as construed?

16 A At least 48, Your Honor.

17 Q Forty-eight?

18 A At least 48.

19 Q Which are the 2 that do not have it?

20 A New York has a statute where there is to be a
21 hearing on the question of whether or not the indigent can
22 pay the fine and, if he cannot pay the fine, they go back and
23 resentence. They don't follow exactly the same procedure as
24 Illinois. And I am informed by counsel in the case that you
25 are to hear following this one that Maryland has recently

1 changed its statute in light of the opinion below in the
2 Schoonfield Case. But to my knowledge, all the rest of the
3 states in the American jurisdiction have statutes similar to
4 Illinois'.

5 Q But many of them, as I understand it, do not
6 have the provision that Illinois has; that if a man, in fact,
7 is unable to work off his fine, he must be released. Am I not
8 right that many states don't have that sort of a release.

9 A Illinois' policy is more benign in this regard,
10 because Illinois does allow discharge where no work is avail-
11 able or where he is physically unable to work.

12 Q That is what I thought, and many of those other
13 47 states do not. Am I mistaken about that?

14 A That is right. That follows, I think, our
15 policy of regarding the incarceration for failure to pay the
16 fine as the equivalent of the collection of money by collecting
17 it in labor. Now, obviously, if we can't collect it in labor,
18 the man has no business in jail.

19 But some other states justify incarceration in lieu
20 of payment of fine on an alternative punishment theory. Since
21 they don't depend upon the collection of revenue theory, it is
22 easy to see why they don't discharge for failure to provide
23 work.

24 Q But in this case, if the statute said one year,
25 a maximum of one year period, and the judge thought that this

1 was a horrible case and the man should get more time -- he
2 couldn't give him but the year ---

3 A He could not.

4 Q But if the statute says as it does here a year
5 and \$500 fine, the judge -- it is undisputed that the judge
6 knows that this man is a pauper ---

7 A I think that is a fair inference to draw.

8 Q Well, I assume he had a sentencing report, I
9 assume so. So he says, "Well, I can't give this man any more
10 time, but I can give him a 100 more days by merely giving
11 him the \$500 fine." On the other hand, if the probation report
12 said that this man is a millionaire that has a hobby of
13 stealing, he couldn't do it.

14 A A judge could say that, Your Honor. The record
15 does reflect ---

16 Q I mean the judge couldn't give that man a 100
17 more days?

18 A That is correct.

19 Q No way under the sun.

20 A That he could not give him an additional 101 days
21 as punishment. Neither could he give the indigent an additional
22 101 days as punishment ---

23 Q What did he give him?

24 A --- he can simply impose a fine ---

25 Q Which he knew he couldn't pay.

1 A Which he knew he couldn't pay.

2 Q And you don't think that is giving him a 100
3 days?

4 A No, sir. We do not equate the 101 days it
5 takes to work off the fine, to give the state your labor for
6 101 days, as the equivalent of 101 days of straight punishment
7 under the statute.

8 Q The difference being?

9 A The difference being that in one case he is in
10 there to give the state the value of his services ---

11 Q In both cases he is in the same jail?

12 A That is correct.

13 Q In the same cell?

14 A Yes, sir.

15 Q But after the one year he is serving something
16 different?

17 A In terms of the theory of why the state has him
18 there, that is correct.

19 Q The theory? Well, what about the man's theory?
20 He is in jail.

21 A Well, in terms of what happens to the man,
22 obviously, there is no difference between the two.

23 Q Does he do different work after the one year?

24 A Not necessarily.

25 Q Why do you keep him overnight?

1 A I suppose one reason we keep him overnight ---

2 Q If your theory isn't some substitute kind of
3 punishment, but you are really just collecting your fine, he
4 doesn't work night and day, why don't you just let him go when
5 he isn't working?

6 A I don't think -- I have nothing in the record
7 to support this -- but I don't think the value of the work-off
8 system, insofar as it applies to the jail system, considering
9 the people who are convicted and have no money to pay their
10 fine, would stand very long if they were permitted to be
11 released at night.

12 Q Why not?

13 A I think there would be a substantial percentage
14 of failures to return to the jail during the day.

15 Q But Illinois, in taking this approach, apparently
16 would keep a person as long as necessary to work off a fine at
17 that rate, even though -- What is the limit?

18 A Illinois has a limitation of 6 months no matter
19 what the fine is. He cannot serve longer than 6 months in the
20 working off of the fine. Illinois is one of the few states
21 to have such a maximum period.

22 Q But he can stay in jail 6 months beyond the
23 maximum term or imprisonment for the offense?

24 A No, no, if he is given the maximum term of
25 imprisonment for the offense, he would stay in jail beyond that

1 maximum term only for so long as it takes to work out the
2 fine at the rate of \$5 a day or 6 months, whichever is greater.

3 Q So he can stay in jail 6 months longer than
4 the maximum term of imprisonment.

5 A Yes, sir, that is correct.

6 In the brief of the appellant an attempt is made ---

7 Q Before you get to that, Counsel, how far back
8 does the \$5 a day measure go? Is that carried over from an
9 old statute?

10 A No, sir. Back in the earlier 1900's the rate
11 was \$1.50 a day. I am not sure precisely how far back it goes,
12 but I think it is relatively recent -- the \$5 a day provision.
13 And it is among the highest in the country in terms of work-off
14 statutes. I think only a very few states have a higher rate,
15 \$8 or something like that being the maximum, most of them
16 averaging around \$5 -- or in some cases even less. Ohio has
17 recently declared unconstitutional \$2 a day. They vary, but
18 Illinois is fairly high up on the list.

19 Q Do you charge him for his board and room?

20 A Not under the work-off system as such. I think
21 it is probably reflected in the value of his labor. In other
22 words, we are not saying to him that your labor is only worth
23 \$5 a day to us. We are probably really saying that your labor
24 is worth at least \$11 a day to us because it costs about \$6.13
25 to keep him.

1 Q Well, when he is serving his year, when he
2 is serving his initial year -- he got a year and \$500 here?

3 A That is correct.

4 Q --- did he work?

5 A I think his record in the appendix reflects that
6 he was assigned to the tailor shop or to the kitchen ---

7 Q Which was the same as he was assigned after-
8 wards?

9 A I presume that is correct.

10 Q Why doesn't he get credit on his fine for that
11 work?

12 A Well, I suppose on the theory that it is a
13 sort of consecutive sentence idea. I mean, if he were convicted,
14 say, of 2 crimes, a defendant under Illinois law could ---

15 Q Well, what would happen to him if, while he is
16 serving his year, assume he refused to work?

17 A During the first year?

18 Q Yes.

19 A Well, I assume he might be put in a disciplinary
20 cell or subject to discipline of some kind or lose his good
21 time, probably, would be the most likely remedy to be employed.
22 If he refused to work, if he refused his lawful assignment of
23 the prison system, I assume he would lose his good time. That
24 would be an incentive for him to work.

25 Q What good reason is there for not crediting the

1 work he does during his regular prison term on his fine? The
2 state is collecting that value from him.

3 A Yes, it is. I assume, though, that the state
4 is entitled to put its regularly-sentenced prisoners to work,
5 even though no fine has been imposed and, as an incidental
6 benefit to the state flowing from the year's imprisonment,
7 they are entitled to collect that labor.

8 Q Don't you pay people for working?

9 A There are some projects in the city jail which
10 prisoners may obtain a small amount of pay from, even though
11 they are not working out a fine. Although sometimes the pay
12 is in the form of privileges or tobacco or things of that
13 sort. It is really not a reimbursement scheme as such.

14 But to answer your question, I think that if a man
15 was sentenced simply for a year in jail, the state is entitled
16 to exact that year in terms of his time in the normal theory
17 of jail punishment; and they are also entitled to the benefits
18 of his labor, I think, during that period.

19 But the sentence in this case was a year in jail
20 and a fine of \$500, a sentence permissible under Illionis
21 law, a sentence which is not challenged in this Court on
22 grounds of constitutionality or rationality. The state is,
23 therefore, saying to Willie Williams, "We are entitled to put
24 you in jail for a year to derive whatever incidental benefits
25 flow to the state from that year's service in jail, and we

1 are also entitled to collect from you a \$500 fine or the
2 equivalent in labor." And I don't think it is irrational
3 for the State of Illinois to say that, insofar as collection
4 of the benefits from the labor are concerned, they must be
5 served separately. In other words, that the fine work-off must
6 follow the year's work-off, and that he need not, under a
7 rational scheme of prison administration, be given credit for
8 the fine work-off during the course of the first year.

9 Q The plain facts are an indigent is forced to
10 serve a lot of time that a man who is not an indigent would
11 not have to serve.

12 A Well, a man who is an indigent must work off
13 his fine in the same jail that men go to who are sentenced.

14 Q It is the same jail, but he doesn't have to
15 work off his fine in the same jail as a millionaire would
16 have to work it.

17 A As the millionaire who pays his fine, that is
18 correct.

19 Q That is the difference, practically speaking,
20 and that is your real issue.

21 A That is true. The question that that raises is
22 does that violate the equal protection clause. And that was
23 the question that was raised in the brief, and that is a
24 question which this Court has never really considered.

25 I would like to turn to my remaining moments of

1 arguments to an examination of how this Court's previous
2 cases, setting forth what the requirements for the equal
3 protection clause are, could touch this case.

4 Obviously, the traditional test that this Court has
5 talked about in equal protection cases is: what class
6 has the state set up? In this case those who do not, for
7 whatever reason, pay their fine. What scheme has the state
8 adopted to deal with that class? In this case, the work-off
9 system. What interests of the state does that scheme serve?
10 In this case, deterrence of crime by preserving the value
11 of fines in the courts which impose fines as a component of
12 our criminal justice system and the collection of revenue
13 which fines bring it.

14 The final question under the traditional test: does
15 the state's scheme rationally relate to the end result which they
16 seek to achieve? In this case we say it does, because the
17 work-off system of Illinois offers the opportunity for the
18 state to keep the fine system viable and, at the same time,
19 to collect the equivalent of the fine in the labor of the
20 defendant.

21 Q What does Illinois collect out of fines each year,
22 do you know?

23 A I am not certain, Your Honor, but it is certainly
24 in the high millions of dollars when you count in the fines
25 collected by the courts which handle cases in which the fine

1 is the only punishment, including traffic offenses -- I am
2 sure it is in the high millions, and, as a practical matter,
3 offers the source of support for those courts which enforce
4 misdemeanor and petty offenses and traffic offenses. Without
5 the revenue derived from the imposition of fines, especially
6 in traffic cases, it would be extremely difficult for the State
7 of Illinois, on their present budget, to support those courts.

8 Q Mr. Thompson, I assume that your jails are
9 overcrowded in Illinois like they are every place else?

10 A Not necessarily, Mr. Justice Marshall. It
11 ebbs and flows. I was out to the Bridewell Jail just a few
12 weeks ago, and they are not overcrowded in the Bridewell. It
13 depends on a number of factors. Sometimes they are overcrowded;
14 sometimes there is space available. Crime doesn't follow
15 a steady pace.

16 Q But do you think that if a statute in Illinois
17 was passed putting a head tax on everybody of a \$100 a year and
18 all who didn't pay it went to jail, it would be valid?

19 A I think that the State of Illinois would be
20 entitled to impose a tax, a revenue-collecting tax, on all
21 of its citizens and to provide some means for alternative
22 collection if the man failed to pay it.

23 Q And he couldn't pay. A man that has never had
24 \$100 in his life, you are going to put him in jail because
25 he didn't have a \$100?

1 A We could extract the value of his labor in
2 services to the state and, if necessary to accomplish that
3 objective ---

4 Q Do you think that is true in the age of 1970,
5 that you can put a man in jail because he doesn't have money?

6 A I would draw a distinction, Your Honor, between
7 your hypothetical and my case for this reason: We are not
8 dealing, in the Williams Case, with an ordinary citizen who
9 has been taxed and has failed to pay. We are dealing with
10 a man who has committed a criminal offense and had a trial
11 which was presumably fair, has been found guilty and has been
12 sentenced to a criminal fine. Now I think the state is
13 entitled to draw different assumptions with regard to Willie
14 Williams and what is necessary to extract the value of his
15 services than it is with a taxpayer.

16 Q What is the difference between Willie who
17 doesn't have a \$1.75 paying a tax or paying a fine?

18 A The difference is simply I think that the
19 state ---

20 Q The state doesn't need the money that bad,
21 does it? Is that correct?

22 A Well, I think on the broad scale, you could
23 certainly say that they do.

24 Q Didn't the judge when he sentenced this man
25 know that he wasn't getting a single dollar out of Willie?

1 A I am sure ---

2 Q Didn't he?

3 A I am sure he presumed that Willie Williams
4 wasn't going to come up with \$500 in cash, that is right.

5 Q All he wanted was to extend the one year sentence;
6 that is all that he was interested in doing.

7 A I don't think that is necessarily a motive that
8 you can ascribe to the judge.

9 Q Can you give me any other one?

10 A Yes, I think he was saying that the circumstances
11 of Williams' crime -- whatever they were and the record does
12 not show it -- warranted the maximum penalty provided for by
13 law.

14 Q Which, so far as jail was concerned, was one
15 year.

16 A That is correct; and insofar as the fine was
17 concerned, the maximum fine.

18 Q So he sentenced him to one year and 101 days.

19 A That is the net result of the sentence, that
20 is correct.

21 Q You don't see a thing wrong with that?

22 A No, sir, I don't.

23 Q Suppose we were to hold that that provision is
24 unconstitutional because it denies equal protection, in fact,
25 although it does not do so, theoretically. What effect would

1 it have on the administration of the law in Illinois?

2 A I think it would have an extraordinary effect
3 on the administration of criminal justice, not only in Illinois,
4 but in all the states.

5 Q Why would it?

6 A In several areas: First, a holding of that
7 kind would necessarily take this Court far beyond the rationale
8 of Griffin vs. Illinois, which provided for, the first time,
9 that the state must attempt to remedy the imbalance between
10 the poor and the rich insofar as the administration of criminal
11 justice is concerned. But the impact of that opinion, so far,
12 has always been confined by this Court to those stages of the
13 criminal justice process which determine guilt or provide for
14 a first appellate review of guilt. This Court has been very,
15 very hesitant. In fact, it has not at all taken the
16 rationale of Griffen beyond those narrow bounds. It seems to
17 me ---

18 Q I was trying to find out how it would block the
19 State of Illinois in any way, I wasn't talking about rationale.
20 How would it affect the administration of the law? Adversely?

21 A This is what it would do: As to those cases
22 where the only penalty provided by law was a fine ---

23 Q Which could be changed.

24 A Which could be changed, except that that would
25 have an extremely harsh impact on the administration of criminal

1 justice ---

2 Q Why would it?

3 A Well, in the traffic area, for example, a
4 state would be loath to provide that the only possible penalty
5 that could be imposed in a traffic case was a jail sentence. I
6 think we would have chaos in traffic law enforcement. I
7 think the same would be true in a number of petty offenses.

8 Q That is getting to what I was talking about.

9 A Right. The second thing that it would do is
10 that it would encourage spurious claims of indigency and that
11 it would impose on the courts least able to handle it a
12 burden of determining something new in a case. Not only must
13 they first determine guilt, but, after a determination of guilt,
14 if there was a claim of indigency and that a fine could not
15 be paid, they would have to hold a hearing to determine whether
16 the man was, in fact, indigent.

17 Now it is one thing to require a hearing of that sort
18 in a criminal court where the issue is does he have the money
19 for a transcript on appeal or a lawyer on appeal, where the
20 judge may have on his call one or two or three or five cases
21 a day. It is quite another thing to say, for example, to
22 the Municipal Court of Chicago in a traffic case, where a
23 judge may have two or three or four hundred cases on his call
24 per day, that whenever he is confronted with a claim of
25 indigency, he must stop and determine that fact in order to

1 decide whether or not the defendant is going to have to work
2 off his fine under the Illinois ---

3 Q I presume there are very few, in the illustration
4 you mentioned, driving automobiles around through the country
5 that couldn't pay a \$5 fine.

6 A I am not so sure that is true, Your Honor.
7 Because, first suppose the fine was substantially greater than
8 that?

9 Q Do you have any statistics how many traffic
10 offenders who can't pay their fines are required to work it
11 out in jail?

12 A No, I don't.

13 Q Do you know that this actually happens?

14 A Yes, I do. It does actually happen, but the
15 percentage figures I don't have.

16 Q Does it happen often?

17 A I think it happens fairly often. I think it
18 happens fairly often.

19 Q I had some experience with the prosecutions in
20 my state. I do not recall a single one where they were not
21 able to pay, except somebody who had stolen the car or some-
22 thing of that kind.

23 A Well, Your Honor ---

24 Q What this amounts to -- which has to be faced --
25 is that it imposes a punishment upon a man who has no money

1 that cannot possibly be imposed on a man who has money.

2 A Well, if I accepted ---

3 Q Isn't that right?

4 A If I accepted you premise, I would agree with you.
5 I cannot, under the terms of my argument, accept the premise
6 that it imposes unfair punishment.

7 Q I am not talking about premises, I am talking
8 about terms of fact.

9 A In fact, he goes to the same jail as a man who
10 is sentenced to a straight jail term, that is correct. And,
11 in fact, if a man pays his fine, he doesn't go to jail.

12 Q In fact, it amounts to sending a man to jail
13 who is fined and who is indigent where you do not send a man
14 to jail who has money and is not indigent.

15 A And who pays the fine, that is correct.

16 Q That is what it results in.

17 A That is just what happens.

18 Q Then the question is does that violate the
19 Constitution?

20 A It does not violate the Constitution, because,
21 under the traditional equal protection test which this Court
22 has set up, if we show a rational class of those who do not
23 pay, a rational statement of objectives to be achieved and a
24 rational connection between the two, the work-off system, it
25 doesn't violate equal protection even though it may treat some

1 people differently than others.

2 But even if we move beyond that traditional test --
3 as this Court has moved in some areas, for example, in the
4 Shapiro Case, testing whether or not a one year residency
5 requirement for welfare violated the equal protection clause,
6 where Mr. Justice Brennan said that in cases involving exercise
7 of constitutional rights you have to show a compelling state
8 interest not merely a rational relationship; or some other
9 cases which have essentially used a balancing approach: do the
10 advantages gained by the state outweigh the disadvantages to
11 the defendant -- we believe that the interest of the State of
12 Illinois and the rest of the states of the Union, in preserv-
13 ing the idea that this does not violate equal protection --
14 this and allied practices such as the area of bail -- is so
15 strong that it outweighs the disadvantage to the indigent
16 defendant, even if the test is compelling state interest or
17 the balancing of advantages to one side.

18 Q I am going to state your balancing in a little
19 different way. Let's forget about the theories. What you
20 are saying is that the state has such a compelling interest
21 in making indigents serve time that no one else has to serve
22 in the state, that it would simply block the state's efforts?

23 A I think that if this Court were to hold that
24 indigency excused a man from incarceration under the work-off
25 system, that the threat to other state interests -- including

1 the maintenance of the whole fine system, the maintenance of
2 the courts which enforce the fine system (especially in those
3 cases where the fine is the only penalty) and the maintenance
4 of the monetary bail system -- and the potential saddling of all
5 those courts with spurious claims of indigency (which do not
6 now arise because a man knows if he doesn't pay his fine, he
7 is going to jail to work it off) are so compelling that they
8 outweigh whatever disadvantages there are in sending an
9 indigent man to jail to work off his fine.

10 Q You would probably have a hard time convincing
11 an indigent of that reasonableness, wouldn't you?

12 A We probably would.

13 Q In the federal system do you know what the
14 statute is?

15 A Yes, Your Honor. The man goes to jail for no
16 more than 30 days in paying off the fine. The Federal
17 Government has it too.

18 Q Is there also a hearing on it?

19 A I beg your pardon.

20 Q Is there also a hearing before that is done?

21 A On the federal statute?

22 Q Isn't it?

23 A I am not sure about that, Your Honor. In
24 Illinois there is no such ---

25 Q Do you think think the intermediate position

1 is also destructive of state interests, I gather, of putting
2 a man -- if he can't pay his fine immediately -- putting him
3 on probation on condition that he work it off outside? I
4 take it you have probation in Illinois, and I suppose the work
5 houses may be cheaper, more efficient way of control, but
6 what is so destructive about state interests if a fellow says,
7 "I got a job -- I can get a job and I'll work it off and
8 pay you in installments, and I'll be on probation; I'll report
9 in every week?"

10 A There are two considerations, I think, Mr.
11 Justice White. If we are going to consider the question of
12 alternatives in the work-off system which are thought to be less
13 onerous to the indigent defendant than the work-off system,
14 the first question which arises is: is it within the province
15 of this Court to examine whether there are viable alternatives,
16 or must this Court, in an equal protection case, refrain from
17 deciding what is a wiser, what is a more humane, what is a
18 more just system of the enforcement of the criminal law.

19 Q Well, I know, but you are talking about state
20 interests.

21 A Yes, sir.

22 Q Compelling state interests.

23 A That is correct.

24 Q And if there is a viable alternative, why then
25 it puts your argument about compelling state interests in a

1 rather different light.

2 A Well, I am not sure. If we were following the
3 traditional test of equal protection cases, we would not stop
4 to inquire whether there were, in fact, alternatives. But
5 if we are following what has been called the balancing test or
6 the compelling state interest test, I am not sure, even there,
7 that the same rule doesn't carry over.

8 In other words, if this Court can find a compelling
9 state interest which is carried out by a rational scheme which
10 the state has selected -- we think the work-off system standing
11 by itself is a rational scheme -- then I am not so sure that,
12 even in a compelling interest case, if this is one, that this
13 Court can say, "But we will strike down the rational scheme
14 because there are other rational schemes which contain less
15 disadvantage to the defendant."

16 As this Court said just a few weeks ago in the
17 Dandridge Case, talking about maximum grants on welfare
18 payments, in the language of Mr. Justice Stewart, reiterating
19 again words which have been used for years in equal protection
20 cases. It may well be that there are other policies available
21 to the State of Illinois, but the question is can this Court,
22 under the equal protection clause, make the state use them.

23 In Illinois, as this Court sits today, we have a
24 legislature sitting, we have a constitutional convention sitting,
25 and I think the arguments which Mr. Bass has made to this Court

1 today are more properly directed to those two bodies.

2 Q Mr. Thompson, I have a question; it won't take
3 too long, I hope. Is it possible that in considering these
4 various alternatives that a holding adverse to the State of
5 Illinois, in this case, could lead judges to impose direct
6 prison, penal sentences without the alternative of a fine and
7 then produce, what is a new term to me these days, counter-
8 productive consequences?

9 A I think that is entirely clear. I think one
10 of the results of such a holding would be that some judges
11 would simply impose maximum jail sentences where they do not
12 now impose jail sentences. I couldn't say that all judges
13 would do that.

14 Q That would apply to this case.

15 A No, sir, it would not apply to this case.

16 Q He gave the over-maximum.

17 A In this case he could not give any more, that
18 is correct.

19 Q My question was addressed to the consequences
20 of the holding and not to any consequence on this particular
21 case.

22 A I think the danger of that as a consequence of
23 the holding is as great a danger as the consequence of this
24 holding for the bail system, for the whole system of fines and
25 the courts which enforce their collection.

1 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Thompson.

2 Perhaps you have 5 minutes left.

3 REBUTTAL ARGUMENT OF STANLEY A. BASS

4 ON BEHALF OF PETITIONER

5 MR. BASS: I don't think I will use that up, Your
6 Honor.

7 Q What do you think about this last thing then,
8 if you seem to have spare time? Do you think there is a
9 so-called "counter-productive" possibility or potential here?

10 A I don't think so, Your Honor. I think that
11 the traffic courts have utilized the fines as a method of
12 keeping the system supported. I don't think that there is any
13 reason to believe that the traffic courts are going to change
14 their practices overnight.

15 Q Well, I wasn't thinking so much of traffic
16 courts as the misdemeanor courts dealing with behavior not
17 as serious as the behavior involved in this case.

18 A I think we are entitled to trust the trial
19 judge's discretion. If they want to individualize the sentence,
20 they should be allowed to do so. If they think that a fine is
21 called for rather than imprisonment, they will impose the fine.
22 If they feel incarceration is called for, they will impose
23 incarceration.

24 Q The net of your view, I take it, is there is no
25 potential for what I have characterized as counter-productive

1 results?

2 A The potential is there, but I think we have to
3 test the courts. I think that the potential will not be
4 realized.

5 I did want to make an observation with respect to
6 the state's complaint that they will have difficulty in admin-
7 istering these evidentiary hearings, going into the financial
8 ability of a defendant. I had always thought that it was a
9 basic principle of American law that it is not better to let
10 a man rot in jail because it was easier for the state's
11 administrative machinery to dispense with hearings.

12 Besides, the lower court judges right now, under the
13 Illinois statutes, conduct inquiries into the defendant's
14 background, etc. in setting bail. There is a statute right
15 now which requires such inquiries. So I don't understand how
16 the state is going to be put to any substantially greater
17 hearings than it engages in right now.

18 Q What would you think of an overt system by a
19 state or a criminal court system which says, "Where it is
20 determined that after investigation that a defendant cannot
21 pay a fine, we just won't impose a fine, but we will impose
22 an alternative, what we think is some equivalent jail sentence?"

23 A That is not an equivalent. That is the problem
24 in this case. If the state feels that he cannot pay, they
25 still must do something less than putting him in jail. A fine

1 is not the equivalent of jail. That is obvious. And if the
2 state wants to get the revenue, there are ways of collecting
3 it.

4 If the state feels that a fine is the type of
5 punishment that is different from jail, if that is appropriate,
6 then that is the punishment that the state should stick to.
7 We are not telling the trial judges what to do. We are
8 simply talking about the manner in which the state gets that
9 exaction. If the judge determines money is the sanction, that
10 should be the sanction.

11 I did want to point to a reference in terms of costs.
12 It was estimated that in the City of Chicago between 1907 and
13 1921 when prison costs were relatively low, the city lost
14 \$5 million in uncollected fines and incurred an additional
15 expense in prison maintenance of \$5 million, a total cost of
16 \$10 million.

17 Q I would like to ask again about the instances
18 in which on a traffic fine when the offender can't pay, and he
19 has been sent to prison to work it out?

20 A We don't have those figures.

21 Q Do you know anything of that practice?

22 A I believe that the traffic courts have been
23 granting installments on some occasions, but I don't have the
24 exact figures.

25 But in terms of the cost problem, the economics of

1 it, it is not so clear at all that the state would be bankrupted
2 by ---

3 Q Well, I suppose that we would agree with you.
4 It would be hard to obtain a conclusion in your favor so as it
5 would not reach the traffic fine situation, wouldn't it?

6 A Well, to the extent that the offense is
7 punishable by fine only, we would be dealing with a situation
8 of poor people being subjected to a sanction different from
9 the sanction as to rich people.

10 Q So that you say that, if we agree with you in
11 this case, we ought to reach the same result in the traffic
12 fine case.

13 A You don't have to reach that in this case, but --

14 Q But we take that step, don't we?

15 A We would submit that if the judge determines
16 that -- Well, first of all, if the offense is serious enough
17 to warrant incarceration of an individual -- which seems to
18 underlie a lot of this, letting indigents get away with
19 violating the law with impunity, because legislature has the
20 ability to set up imprisonment as an alternative -- but if
21 the offense is not serious enough to require an exaction
22 greater than the fine, there is no justification for putting
23 people in jail simply because they don't have the wherewithal
24 to pay that.

25 Q You have almost gone around the circle now on

1 my counter-productive proposition. You say the legislature
2 might respond by making a greater number of classes of crime
3 subject to imprisonment which are now subject only to fines as
4 a response to a holding that you can't have an alternative for
5 a poor man.

6 A Well, it is possible that the legislature has
7 always had the discretion to determine what penalties are
8 appropriate for what offenses. What we are talking about in
9 this situation is an automatic system that puts people in jail
10 without any inquiry whatsoever about whether the money --
11 which the state says is the appropriate sanction -- the fine,
12 can be satisfied in means less onerous.

13 Q If the legislature has all these powers, this
14 is exactly what the legislature has done in this case.

15 A The legislature has not, -- according to the
16 construction put on the statute by the Illinois Supreme Court --
17 the legislature has not allowed these alternatives.

18 Q As I understood, that is what this case is
19 about; that the Illinois Legislature has said that if a
20 person who is convicted cannot pay his fine, he can be put
21 in jail instead.

22 A Well, that is what they said.

23 Q That is what the case is about. So the
24 legislature has done this.

25 A But our point is that the legislature may not

1 constitutionally do that.

2 Q But it may, according to your submission as I
3 understand it, say that the punishment for any offense can be
4 fine up to \$5 or imprisonment up to 5 days?

5 A The legislature may prescribe maximum penalties,
6 yes.

7 Thank you.

8 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Bass.

9 Thank you, Mr. Thompson. The case is submitted.

10 (Whereupon, at 11:54 a.m. the argument in the above-
11 entitled matter was concluded.)

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