34 Franklin St.
Lyons, NY 14489
November 30, 2005

Mr. Richard Healey
Wayne County District Attorney
Hall of Justice, Suite 202
Lyons, NY 14489

Case No: 05070051.01
Ticket: LT866460.0

Dear Mr. Healey and Judge Forgione:

I earlier sent you a letter & motion dated November 19th that also went to Mr. Wunder. I wish this text to be included with that motion. A copy is available at: **http://www.AkidsRight.Org/support/lyons2.pdf**

The letter addresses issues involved with my pending trial (Dec. 12th) on driving with a suspended license caused by New York State claiming I was over $55,000 behind in support payments. In the letter and affidavit I admitted to driving on at least 100 other occasions since the initial arrest. I asked those incidents be added as pending charges to be resolved at my trial.

I write today because I was disturbed by a conversation I had with Mr. Wunder (my prosecutor) last week. I called to ask him if he had any problems with my motion. He told me he didn't like to talk on the phone, but that Judge Forgione would make the decision. I was surprised to hear that since the Judge does not have the role of prosecutor.

Let me be clear. I would like to be arraigned on the hundred other incidents before the trial begins on the 12th. I will be happy to testify to each incident at the trial and dispose of everything at that time. The facts in this matter are very simple and I would assume Judge Forgione would not object to that if both the DA and myself agreed to it. I wish to get this matter resolved.

I'd like to have my good name cleared of these incidents and have the law that connects driving to child support payments declared unconstitutional. Or, I expect to be found guilty of over 100 counts of aggravated unlicensed operation and jailed since I obviously do not know how to function in our civil society. This would also result in my 89-year-old mother being taken to a nursing home to die since there is no one but me to care for her -- a side effect of her having a son who society has labeled a criminal.

I'm not an attorney and my request for counsel was denied. I've collected advice and attached a memo to this letter containing a collection of case law. I hope it will provide rationale to support my position and also assist you in any research you might perform on the issues. Federal law outlaws debtor's prisons

– but that is exactly what has been intentionally created in New York State by connecting driving and support payments.

Please understand I regret having to push this matter, but the worst thing that could happen is for your office or the Judge to ignore what has happened. I have a great deal of respect for Judge Forgione and Mr. Wunder and don't like putting them in a difficult position. As a good citizen of my community I have found myself in an untenable position; especially with a very ill mother. Driving with the knowledge that the slightest traffic violation could result in an arrest and custody – leaving mama unable to care for herself and alone. Possibly frightened by strangers showing up and telling her, 'your son is in jail and we have to take you somewhere…" What an awful thing to happen.

I regret seeing her in this position. I have been involved in peaceful Civil Rights activities at the Syracuse Federal Building and sometimes jailed. With her illness I curtailed those actions, but being arrested in my hometown for simply driving and asked to plead guilty to a crime is quite another matter.

Please, I ask you to deal squarely with this matter. In my original letter I included a complete history of what happened and why. It is easy to say "$55,000 DEADBEAT!" – much harder to read 10 pages. I wish to be clearly found innocent or guilty, in either case, I feel the cause of reform will move forward.

Sincerely yours,

John Murtari
315-430-2702 (cell)

## Memorandum of Case Law

### Excerpts from:
### http://www.newswithviews.com/Devvy/kidd141.htm

"The highest law of the land is the Constitution of the United States." Stephen K. Huber, Professor of Law, University of Houston

"The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The United States Constitution is the supreme law of the land, and any statue must be in agreement with it to be valid. It is impossible for both the Constitution and a law violating it to be valid; one must prevail over the other. The Sixteenth American Jurisprudence, (2nd ed., Section 256), states:

"The general rule is that an unconstitutional statue, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose; since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it. A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby." Dr. Jacques S. Jaikaran, author of Debt Virus

Walking into or exiting a hotel, bank or "other public places" is a fundamental right and an action freely chosen by an individual; it is not a mandated activity by any federal, state or local law, ordinance or statute. Free Americans have a constitutional right to travel which is protected by the U.S. Constitution; see Crandall v. Nevada, 73 U.S. (6 Wall.) 35, 49 (1868)("We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own states"); Kent v. Dulles, 357 U.S. 116, 125, 78 S.Ct. 1113, 1118 (1958)("The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment"); United States v. Guest, 383 U.S. 745, 757, 86 S.Ct. 1170, 1178 (1966)("The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union");

Shapiro v. Thompson, 394 U.S. 618, 629, 89 S.Ct. 1322, 1329 (1969)("This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules or regulations which unreasonably burden or restrict this movement") Dunn v. Blumstein, 405 U.S. 330, 339, 92 S.Ct. 995, 1001 (1972)("....since the right to travel was a constitutionally protected right, 'any classification which serves to penalize the exercise of that right unless shown to be necessary to promote a compelling governmental interest, is unconstitutional'");(The Court in Dunn also declared that "The right to travel is an 'unconditional personal right, ' a right whose exercise may not be conditioned.'" Id, at 341); and Memorial Hospital v. Maricopa County, 415 U.S. 250, 254, 94 S.Ct. 1076, 1080(1974)("The right of interstate travel has repeatedly been recognized as a basic constitutional freedom").

See also Schachtman v. Dulles 225 F2d. 938, 941 (D.C.Cir. 1955)("The right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law"); Worthy v. Herter, 270 F.2d 905, 908 (D.C.Cir. 1959)("The right to travel is a part of the right to liberty"); Cole v. Housing Authority of City of Newport, 435 F2.d 807, 809 (1st Cir.1970)("...the right to travel is a fundamental personal right that can be impinged only if to do so is necessary to promote a compelling governmental interest"); King v. New Rochelle Municipal Housing Authority, 442 F.2d 646, 648 (2nd Cir. 1971)("It would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state"); and

Demiragh v. DeVos, 476 F.2d 403, 405 (2nd Cir. 1973)("...the fight to travel....[is] a 'fundamental' one, requiring the showing of a 'compelling state or local interest to warrant its limitation"); United States v. Davis, 482 F.2d 893, 912 (9th Cir. 1973)("....it is firmly settled that freedom to travel at home and abroad without unreasonable governmental restriction is a fundamental constitutional right of every American citizen....At the minimum, governmental restrictions upon freedom to travel are to be weighed against the necessity advanced to justify them, and a restriction that burdens the right to travel 'too broadly and indiscriminately' cannot be sustained"); and McLellan v. Miss. Power & Light Co., 545 F.2d 919, 923 n. 8 (5th Cir. 1977)("The Constitutional right to travel is 'among the rights and privileges of National citizenship");

Costa v. Bluegrass Turf Service, Inc., 406 F.Supp. 1003, 1007 (E.D.Ken. 1975)("...pure administrative convenience, standing alone, is an insufficient basis for an enactment which...restricts the right to travel"); Coolman v. Robinson, 452 F.Supp. 1324, 1326 (N.D.Ind. 1978)("The right to travel is a very old and well established constitutional right"); Tetalman v. Holiday Inn, 500 F.Supp. 217, 218 (N.D.Ga. 1980)("the constitutionally protected right to travel...is basically the right to travel unrestricted by unreasonable government interference or regulation"); Bergman v. United States, 565 F.Supp. 1353, 1397 (W.D. Mich. 1983)("The right to travel interstate is a basic, fundamental right under the Constitution, its origins premised upon a variety of constitutional provisions").

The Bill of Rights is just that: rights, not privileges and no federal or state agency can violate our rights as reaffirmed by the Bill of Rights. These are rights we are all born with, no government gave them to us nor can they take them away. These precious tenets are the very foundation of our Republic. In Miller v. U.S., 230 F., 2nd 286, 489 the court said: "The claim and exercise of a Constitutional Right cannot be converted into a crime."

Jefferson said it perfectly and city fathers, local law enforcement and the federal dragoons need to pay attention:

"Under the law of nature, all men are born free, every one comes into the world with a right to his own person, which includes the liberty of moving and using it at his own will. This is what is called personal liberty, and is given him by the Author of nature, because necessary for his own sustenance." --Thomas Jefferson: Legal Argument, 1770. FE 1:376

## Excerpts from Roger Knight's: http://www.antipeonage.0catch.com/

The purpose of this website is to introduce you to an Act of Congress that folks seem to have forgotten over the years. This statute is the Antipeonage Act of 1867. It currently exists as 42 U.S.C. §1994, which is the civil provision, and 18 U.S.C. §1581, which is the criminal provision. Just to keep you from thinking that I am talking about a myth, you may look these statutes up in the United States Code.

The Antipeonage Act is appropriate legislation Congress passed to enforce the Thirteenth Amendment, which abolishes slavery and involuntary servitude except as a punishment for a crime. It is not the least bit unconstitutional,

because it is authorized by an Appropriate Legislation Clause. What the Antipeonage Act does is that it defines as null and void any attempt by virtue of state law to establish, maintain, or enforce the service or labor of any person as a peon in liquidation of a debt or obligation, or otherwise.

In *Brent Moss* Judge Hollenhorst of the California Court of Appeals wrote:

The leading case is *In re Jennings, supra* 133 Cal. App. 3d. 373, 184 Cal Rptr. 53. The facts are analogous to those here, although the evidence is stronger in that Husband had been self-employed as an architect and had earned an average of almost $70,000 per year prior to the support judgment, following which he apparently "let his business interests ... depreciate to the state where they were practically useless," gave up his practice, and declined other offers of professional employment. (133 Cal. App. 3d. At pp. 377-379, 184 Cal Rptr. 53.) In making its findings of contempt, the trial court used harsh language, apparently fully justified by the facts, regarding Husband's deliberate choice to "collapse the entire structure of [his] life rather than comply with [his] duties under the law as a husband."(*Id.* at p. 384, 184 Cal. Rptr. 53)

Nevertheless, the Court of Appeal annulled the order, holding that a sentence of incarceration could not be imposed merely because Husband chose not to seek employment or to earn money in any way. The court relied on *Ex parte Todd* (1897) 119 Cal. 57, 50 P. 1071 in which the Supreme Court overturned a judgment of contempt based on the contemnor's failure to seek employment, although he was admittedly without funds. The court held, in what must be considered the strongest terms, "This order was clearly in excess of the power of the court, which cannot compel a man to seek employment in order to earn money to pay alimony, and punish him for his failure to do so." (119 Cal. at p. 58., 50 P. 1071).

As the *Jennings* court noted, *Todd* was followed more recently in *In re Brown* (1955) 136 Cal. App. 2d 40, 288 P. 2d. 27. *Brown* is perhaps more similar to this case than is *Jennings* in that in *Brown* there was no allegation that the contemnor had voluntarily given up employment or refused an offer; he was merely content to be supported by his new wife. This, the court held, could not support a contempt citation.

The basis for these holdings, as *Jennings* explains, is the constitutional prohibition against involuntary servitude, as contained in the Thirteenth Amendment to the United States Constitution, and paralleled in Article I, section 6 of the state Constitution. The court also pointed out that the United States Supreme Court, discussing the Antipeonage Act (implementing the Thirteenth Amendment under the enabling language of the Amendment; see now 18 U.S.C.A. § 1581, 42

U.S.C.A. § 1994), has stated that ***". . .Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service. This congressional policy means that no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor." (Pollock v. Williams (1944) 322 U.S. 4, 18, 64 S. Ct. 792, 799, 88 L. Ed. 1095.)***

at 56 Cal. Rptr. 2d. 868-869

The California Supreme Court reversed the above decision as to involuntary servitude and peonage arguments. They created a distinction between alimony and child support and reversed *Todd* as to child support while leaving it unreversed as to alimony.

They equated the duty to provide for a child with compulsory military service, jury duty, and roadwork.

Compulsory military service is justifiable only when there is a threat to the survival of the nation. It is temporary, lasting no more than a few years or the duration of a war. In the event of a nuclear conflict, such a war could be over before any draftees could report for duty.

Jury duty is temporary, no more than a few weeks or the duration of a trial.

These three obligations were never a long term servitude or a servitude for life.

**Excerpt from:**
**http://www.kylewood.com/familylaw/zablocki.htm**

**[This included, drawing analogy to Freedom to travel as an essential liberty.]**

## Zablocki v. Redhail, 434 U.S. 374 (1978)

**CASE:** Man denied a marriage license because of a state law forbidding men with minor children to support from getting married without special permission from the court.

**FACTS:** Redhail was as Wisconsin resident ordered to pay child support for his illegitimate daughter born while he was in high school. He quickly fell behind on the payments of $109 per month. Two years later, he filed an application for a marriage license with Zablocki, the County Clerk of Milwaukee County, and was denied on the grounds that he had a child to support and had not received permission from a court to get married. The Wisconsin law provides that "any Wisconsin resident having minor issue not in his custody and which he is under an obligation to support by any court order or judgment" may not wed without first obtaining a court order granting permission to marry. Court permission cannot be granted unless the marriage applicant submits proof of compliance with the support obligation and, in addition, demonstrates that the children covered by the support order "are not then and are not likely to thereafter to become public charges." He stipulated that he would have failed to meet both prongs, as he was behind in his payments and that, even with his payments, the child would still have to rely on public assistance. The U.S. District Court for the Eastern District of Wisconsin struck down the law as a violation of the Equal Protection Clause; Zablocki made a direct appeal to the Supes arguing that the D.C. erred; Redhail defended the ruling and also argued that the law did not satisfy the requirements of substantive due process.

**REDHAIL ARGUES:** The law deprived him of his right to liberty (privacy) without due process of law and of his right to equal protection of the law

**STATE ARGUES:** The law is necessary to the acomplishment of the permissible (compelling) state interests of "preserving the racial integrity of its citizens" and to prevent "the corruption of blood," "a mongrel breed of citizens," and "the obliteration of racial pride." Also, the state argued that regulation of marriage was traditionally a state function except from federal legislation or control and that the regulation of marriage should be left to exclusive state control under the Tenth Amendment.

**OPINION OF THE COURT:** State deprived man with an illegitimate child whom he was obligated to support of his right to equal protection of the law when it required him to receive a court order in order to marry.

**RATIONALE:**

1. Such a classification must survive strict scrutiny.
2. The right to marry is a fundamental right stemming from the right to privacy (liberty) under the Fourteenth Amendment.
3. If the right of a woman to abort a fetus is considered a fundamental right, then surely the right to choose to marry and raise the child in a traditional family setting must receive equivalent protection.
4. The statute significantly interferes with a fundamental right (right to marry).
5. State's interests in furnishing those in Redhail's position with an opportunity to be counseled as to the necessity of fulfilling his other obligations and protecting the welfare of out-of-wedlock children are legitimate and substantial, but less intrusive ways of achieving these ends are available to the state.
6. There are other, more effective ways for the state to collect from deadbeat parents.
7. State interest in counseling applicants cannot support the withholding of court permission to marry once the counseling is completed.
8. Classification is over inclusive in that it fails to take into account a situation in which the applicant's financial situation will actually improve with marriage. Preventing them from being able to get married might actually injure those (children) it was meant to protect by guaranteeing that the support obligations will never be met. The net result might be more illegitimate children.

**CONCURRING OPINIONS:**

**Stewart wrote:**

- DUE PROCESS: This is not an equal protection clause case. To say that the statute creates classifications in the equal protection sense struck him as "nothing short of fantasy." "The problem in this case is not one of discriminatory classifications, but of unwarranted encroachment upon a constitutionally protected freedom. I think that the Wisconsin statute is unconstitutional because it exceeds the bounds of permissible state regulation of marriage, and invades the sphere of liberty protected by the Due Process Clause of the Fourteenth Amendment." This case is one of substantial due process by another name. This bait-and-switch only serves to misdirect a confused doctrine. The majority should call a spade a spade and just say that the law violates substantive due process.

- RIGHT TO MARRY: There is no right to marry, as evidenced by the fact that the states can significantly limit or, in some cases, entirely prohibit couples from getting married. Even so, there are some limits to state interference.

  **Powell wrote:**

- STANDARD OF JUDICIAL SCRUTINY DEPRIVES THE STATES: The majority's opinion sweeps too broadly in requiring that any regulation that "directly and substantially" interferes with the decision to marry be subjected to the strict-scrutiny test. "A 'compelling state purpose' inquiry would cast doubt on the network of restrictions that the States have fashioned to govern marriage and divorce."

  **Stevens wrote:**

  - This case can be distinguished from *Califano v. Jobst,* 434 U.S. 47 (1977), in that *Jobst* dealt with a classification based on marital status whereas this one deals with a classification based on the right of whether to enter into marriage. "The individual's interest in making the marriage decision independently is sufficiently important to merit special constitutional protection."

  - The law has perverse outcomes in that it keeps from poor from getting married, applies "to childless couples, couples who will have illegitimate children if they are forbidden to marry, couples whose economic status will be improved by marriage, and couples who are so poor that the marriage will have no impact on the welfare status of their children in any event. Even assuming that the right to marry may sometimes be denied on economic grounds, this clumsy and deliberate legislative discrimination between the rich and the poor is irrational in so many ways that it cannot withstand scrutiny under the Equal Protection Clause of the Fourteenth Amendment.