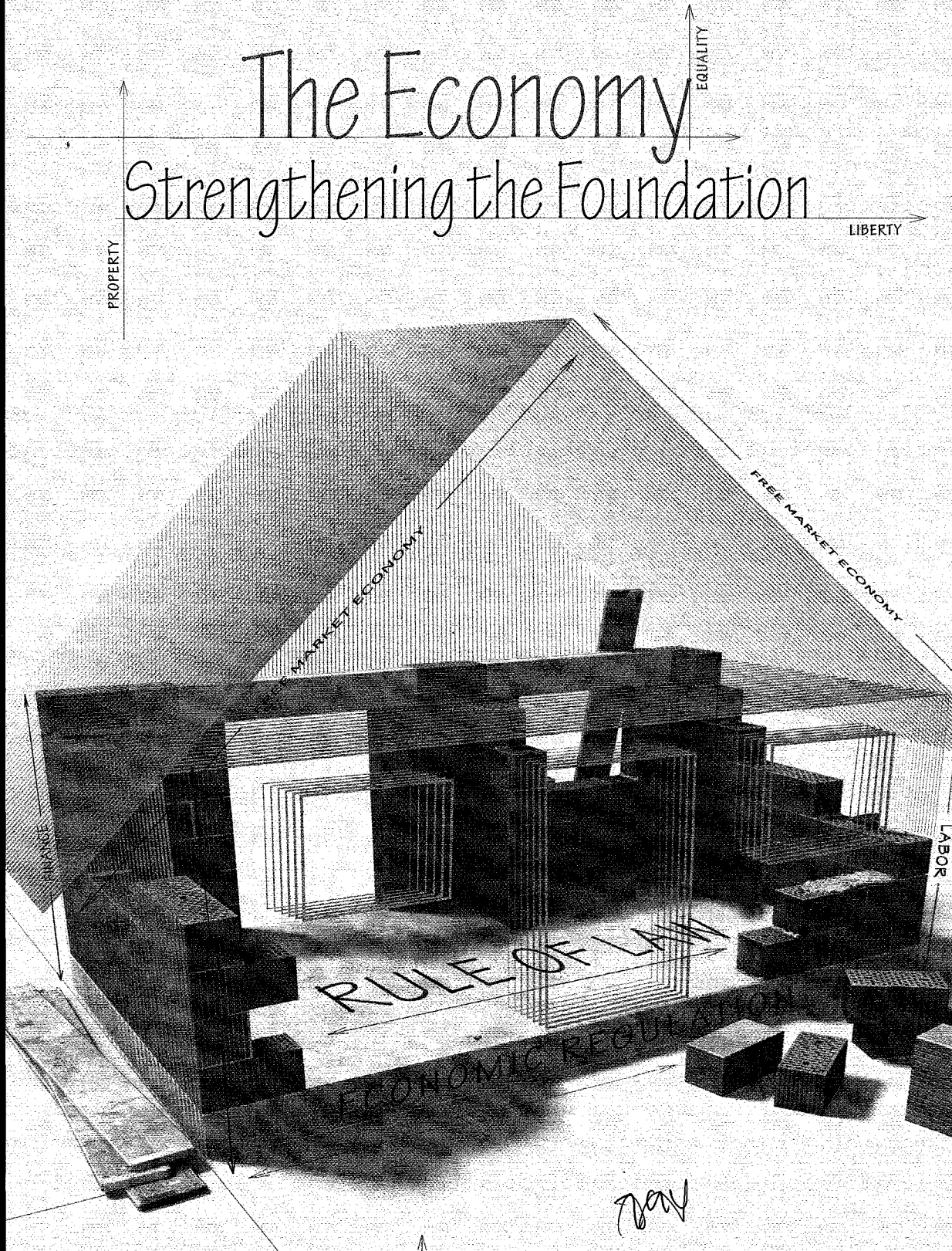


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Economic Regulation and the Rule of Law: Minimum Standards for the Legal Framework of a Free and Democratic Society

We have been so focused on the benefits of credit market deregulation that we forgot the ways in which markets can fail. The lack of appropriate market regulation has profoundly undermined the world economy. An understanding of the relationship between markets and regulation may help judges interpret statutes, regulations, and common law rules of contract, tort, and property.

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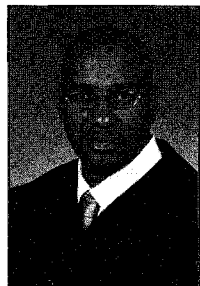
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How the Economic Crisis Affects Defendants in My Courtroom

By Judge Ronald A. Wilson

Introduction

I am not a scholar or an expert on the subjects of economics and the relationship between poverty and crime. However, my position as presiding judge of the municipal court of South Tucson, Arizona, provides me with ample opportunity to observe the effects of the current economic crisis on indigent defendants who appear before me. These people include single parents living with their small children in cars, under bridges, in alleys, and in the desert; unemployed people who have lost their homes; and homeless veterans suffering from mental illness and co-occurring substance abuse prob-



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lems. The worsening economic conditions have significantly impacted this population. I have seen an increase in petty misdemeanors and quality-of-life crimes. I submit the following article to you in the hope of advancing the discussion about what we as judges can do to respond to the suffering caused by difficult economic times and the resulting heavier caseloads in our courts.

I begin with some information about my jurisdiction. I would like to create a snapshot, if you will, to provide a glimpse into the life of our community. For some of you, the image will be a familiar one; for others, it will provide a closer look into the life of a community that is struggling to make ends meet. But the story is not an unusual one—all of you have heard it to greater or lesser extents.

South Tucson is a small municipality in southern Arizona that is located seventy miles north of the Mexican border. The city is 1.2 square miles in size. There are approximately 6,500 documented residents living within the city limits. Nearly ninety percent of the residents of South Tucson are Hispanic. Approximately eight percent are Caucasian. Less than two percent are African Americans or Asians. Most residents of South Tucson live below the poverty line.

We have a mayor, city council, police department, fire department, public works department, city clerk, and courts. I was appointed presiding judge in 2002, and I am the only full-time judge for the city. Our court has a staff of three. There is one full-time court clerk, one part-time court clerk, and one full-time court administra-

tor. The city contracts with a prosecutor, a public defender, and a probation officer. Our annual operating budget, including salaries and benefits, totals \$230,000.00. Our hours of operation are 8 a.m. to 5 p.m., Monday through Friday.

The South Tucson City Court is a limited jurisdiction court. All of our cases are class 1, 2, or 3 misdemeanors. Annually, our court processes roughly 6,000 cases. Roughly twenty-five percent of them are civil traffic or criminal traffic offenses. The rest are quality-of-life criminal misdemeanors. In the past seven years, our court has processed nearly 40,000 violations. Approximately ninety percent of these violations are committed by people living in poverty. In addition, more than ninety-eight percent of our defendants who are incarcerated will eventually be released back into the community. Those not released are either deported or awaiting sentencing on a felony conviction or probation violation.

The courts strive to meet the needs of the community. I believe that the judicial branch of government is responsive, fair, impartial, and accessible. Over the past seven years, we have identified and resolved many issues. These include streamlining case flow management, reducing backlog, and reducing recidivism. In addition, some of our goals are to improve collections, increase alternatives to incarceration, provide better access to the courts, build bridges to community stakeholders, and improve the administration of justice. We regu-

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larly participate in community meetings with a variety of agencies to help us achieve these goals.

Crime and Poverty

There is a large homeless population in the city. Many of the homeless come to South Tucson because of the social service providers that are located here. The veterans hospital, soup kitchens, homeless shelters, Arizona Department of Economic Security, behavioral health agencies, and several substance abuse treatment centers are all located within the 1.2 square miles of the city.

In addition, large segments of the residential community are rental properties or low budget motels. It should be no surprise that most of the hotel owners and landlords do not live within the city limits. Additionally, most crimes in South Tucson are committed in or around these facilities.

The government of South Tucson does an excellent job providing services to the community. The mayor and council are attentive to the needs of their residents.

Garbage removal, street cleaning, public works, and emergency response are very effective. The city goes above and beyond the call of duty to assist those who may be experiencing hardship or heartache.

In addition, the residents of South Tucson are very compassionate. The locals refer to South Tucson as a "pueblo within a city." It is not uncommon to hear citizens refer to their neighbors as lifelong friends and family. Most homeowners have lived here all of their lives. Many families have lived here for three or four generations. The residential neighborhoods are peaceful for a city with such a high population density (6,500 documented residents living within 1.2 square miles) and such poverty. Unfortunately, graffiti, slum lords, junked vehicles, junk dealers, drug dealers, prostitutes, vacant lots, abandoned buildings, stray dogs, and street gangs keep the city from realizing its potential.

The consequences of poverty are often crimes. Those living in poverty are faced with difficult choices. Often, the impoverished are forced to make decisions that are "deviant." When starvation or survival dictates a person's choices, the law often takes a back seat. When people are unemployed, uninsured, uneducated, and homeless, they often become depressed, suicidal, or homicidal. The will to survive

overwhelms them. Laws are a luxury that they cannot afford.

Without knowing why people commit crimes, it is impossible to develop meaningful ways to reduce or prevent crime. Over the years, I have seen many problems and our position as judges gives us the ability to solve several of them. We are part of the solution, not the problem.

For instance, during sentencing, I make it a point to talk with offenders about their crimes. I speak with them about their conduct and the reasons behind their choices. I also attend recovery, sobriety, or reentry meetings on a regular basis. I solicit feedback from social workers, probation officers, counselors, court staff, family members, victims, law enforcement personnel, and attorneys. One thing that I have learned is that every poor person is not a criminal, every crime has a victim, certain crimes are directly linked to poverty, and there are many effective alternatives to incarceration. This approach has allowed me to become more efficient at imposing sentences that hold people accountable, that rehabilitate, and that strive to make the victim whole.

In addition, many people living in poverty have co-occurring mental health and substance abuse issues. The remainder are often disabled, elderly, ex-offenders, or

veterans. Without treatment, counseling, living assistance, and effective recovery programs, they are very rarely able to change their living conditions. At some point, many of them begin to “self medicate” and before too long, addiction becomes an additional impediment to normalcy or progress. The courts have an opportunity and responsibility to improve the administration of justice. This can be accomplished by understanding who our clients are and how we can best serve them.

As the poor struggle to survive, some make choices that often violate the law. There are several common crimes or quality-of-life crimes that are directly related to poverty. The type and frequency of these crimes vary depending on the level of poverty and co-occurring issues.

Everyone is familiar with the crime of shoplifting or theft. We hear stories on the news of entertainers who steal clothing from department stores, even though they can afford to pay for them. We see videos of soccer moms switching price tags on clothing. We hear of people who go to the theatres and pay for one movie, but stay to watch several. Employees pilfer office supplies. People download music or movies without authorization. Sales clerks sell merchandise to their friends at an unauthorized discount.

The cases brought to me involve a different kind of shoplifter. My shoplifters steal food, toilet paper, deodorant, diapers, aspirin, bug spray, bandages, batteries, flashlights, blankets, soap, and beer. They also steal small toys, stuffed animals, music, and small electronics.

Shoplifting is just one example of criminal activity that has increased as the economy has worsened. Other crimes have also been on the rise. Loitering, panhandling, criminal trespass, and failure to obey lawful order citations have also increased. Additionally, many of these people do not have identification. Consequently, defendants are often cited

for failure to carry identification or for false reporting. And I have yet to see a police report that tells of a wealthy person arrested for sleeping at a bus stop or asking for change outside of a convenience store.

As people lose their jobs, they do not have the means to pay for basic human necessities. Most of the “new poor” are not familiar with or comfortable with living in poverty. They do not know how to access services. Unfortunately, they are more comfortable shoplifting or eating at a restaurant and not paying for the meal than they are “dumpster diving.”

Crimes related to substance abuse are also on the rise. As people lose their jobs, their homes, and their livelihood, they often slip into depression. Without health care, they often self-medicate with alcohol or other drugs in order to cope with their feelings of failure, abandonment, loss, anger, confusion, and betrayal. Too often the drugs and alcohol lead to driving under the influence, domestic violence, possession of narcotic paraphernalia, drinking in public, or disorderly conduct.

In addition to quality-of-life crimes, there are also several criminal traffic and civil traffic offenses that are on the rise. Within a few weeks of unemployment, many people fail to renew their car insurance or registration. The working poor must decide which bills to pay now and which bills to pay later. Sometimes the bills that they don’t pay result in consequences that they did not foresee. What they fail to realize is that driving without a valid registration or car insurance may result in significant fines and the suspension of their driver’s license. The fines often exceed \$1000. Most defendants who cannot afford the cost of insurance or registration most likely cannot afford the fine amount. If they fail to pay the fine,

their driver’s license is suspended. If they are caught driving on a suspended license, the vehicle that they are driving will be impounded and the driver will be taken to jail. Often this is the only vehicle in the household. In addition, the impound fees can exceed \$500, making it even more difficult for a family that is already struggling to move forward with their lives.

When a person lives in an area that has poor public transportation, like many of the Indian reservations or rural areas, no license and no car means no job. In addition, people in these areas will now find it very difficult to get their children to day care, doctor’s appointments, or school. If children are truant, parents may be cited into court or contacted by child protective services. A missed doctor’s appointment can lead to significant health issues, especially if there is a need for medications to address diabetes, high blood pressure, heart disease, or mental illness. A simple infection can become life threatening, and the lack of birth control can trigger an increase in unwanted teen pregnancies. The criminal justice system can unintentionally reward the wealthy and penalize the poor.

Many of the working poor fail to fix minor mechanical problems like a cracked windshield or broken taillight. This leads to an increase in traffic stops. When people do not have the money to pay their fines, their licenses are suspended and they are sent to a collection agency. The collection agencies add a maximum of a twenty-percent surcharge to an outstanding balance and a license is not reinstated until a fine is paid in full. This makes it even more difficult for an offender to become compliant and get his or her license reinstated. In addition, a default is reported to the credit bureaus, which eventually lower a person’s FICO score. The result is a significant increase in obtainable interest rates.

How the Courts Can Respond: One Example

The courts must be allowed to function in a way that is consistent with the powers set forth in the U.S. Constitution, state statutes, and city codes. The U.S. Supreme

My shoplifters steal food, diapers, aspirin, bandages, batteries, blankets, soap, beer, and small toys.

Court is a source of guidance on our powers as courts and responsibilities as judges. The codes of judicial conduct and ethics direct our behavior. However, integrity is not something that can be legislated. This is why it is important that the judicial branch of government be insulated from the "temporary passions" of the public. We must make sound decisions that are not motivated by politics or special interests.

The Fourth, Fifth, and Sixth Amendments of the Constitution provide protections for citizens accused of violating the law. These protections include a guarantee that no person shall be deprived of life, liberty, or property without due process of law, as well as protection from excessive bail, excessive fines, or cruel and unusual punishment. Together, the powers granted to the courts and the protections guaranteed to the accused empower the courts to implement initiatives that will improve the response of the legal profession to the special difficulties that arise as a result of these tough economic times.

A critical stage of the criminal justice process occurs when officers make the decision to cite and release or to take a defendant into custody. If a defendant is taken into custody, we must seize the opportunity to assess and evaluate the defendant's risk factors. All defendants who are arrested for low-level quality-of-life crimes should be processed by an agency to identify the root causes of their behaviors.

This assessment can also be used to help judges determine whether to release or require bail. One of the factors that should be considered is a defendant's tie to the community. If defendants are transient or homeless, they do not have ties to the community. This situation provides the courts with opportunities to connect such defendants to much-needed services. Although these defendants may not have physical addresses, they can use the addresses of a payee, guardian, family member, or social service provider. This gives courts the ability to notify homeless defendants of court dates and use a defendant's extended family as

a resource. This approach will reduce the number of failure-to-appear warrants that are issued, recidivism, backlog, jail costs, and officer time. It can also increase officer safety. In addition, it will reduce the number of warrants issued because defendants lack transportation, are illiterate, are fearful of losing their jobs, or are afraid of going back to jail. Judges should immediately have defendants who are not released transported for their arraignment or initial appearance.

Conclusion

We have an opportunity to reduce crime, reduce recidivism, protect victims, keep our communities safe, and help solve the problems that nurture criminal activity. We can accomplish these goals without compromising our duty as judges and obligations as jurists. When people commit crimes out of desperation or hopelessness, the courts must use their position of authority to ensure that the due process of law is functioning properly and individual liberties are protected. Self-represented litigants, the poor, those with mental illness, and those who suffer from substance abuse must not be punished with excessive fines and excessive bail.

In many cases there is a relationship between mental illness, substance abuse, and homelessness. Unfortunately, the problem cannot be adequately addressed if the mental health system and the criminal justice system operate in the dark. We must work in partnership to find solutions. In order to effectively administer justice, judges should consider the big picture. The costs associated with the criminal justice system have spiraled out of control; our failure to contain them is becoming irresponsible. It is also irresponsible and too costly for us to use jail, probation, and fines as the only consequences for offenders that suffer from mental illness, addiction, or poverty. We must look beyond retribution, revenge, and restitution. We must be proactive. When we incarcerate the mentally ill, addicts, and the poor for minor, petty, quality-of-life crimes, we often exacerbate the problems. They

often return to our communities worse than when they left.

Many crimes can be prevented if we address the root cause. By working with agencies that serve the poor, veterans, the mentally ill, and substance abusers, we can improve our ability to function effectively and efficiently. Jails and prisons should not be used for warehousing the poor.

These observations, once again, are just that: observations. Poor communities have some unique problems. And yet, there are universals here. It is my hope that we can use our power as judges to address those universal problems and find some creative and effective ways of alleviating the increased suffering to which you are all, no doubt, witnesses from the bench. ■