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PRACTICAL DEFENSE PROBLEMS—THE TRIAL LAWYER’S VIEW

RICHARD A. BOWMAN

INTRODUCTION

According to overwhelming evidence which has been amassed from laboratory impact and proving ground collision tests and from actual accident investigation data, the single most significant source of automobile crash protection for occupants is a properly worn “seat belt” restraint system.¹ In appreciation of this irrefutable fact, the United States Department of Transportation’s Federal Motor Vehicle Safety Standards requires belt-type occupant restraints.² Almost three dozen state legislatures require seat belt installation in new automobiles.³ Other state legislatures enforce belt standards.⁴ The National Safety Council,⁵ Automobile Crash Injury Research,⁶ the American Medical Association and the U.S. Department of Health, Education and Welfare agree that up to 10,000 deaths could be avoided each year of vehicle occupants would BUCKLE UP!⁷ Moreover, leading accident investigators and trauma and safety research groups have concluded that serious automobile accident injuries could be reduced from thirty

¹ Adapted from an article by Richard A. Bowman, Proving the Seat Belt Defense, 37 Ins. Counsel J. 385 (1970).
² Associate, Cant, Haverstock, Gray, Plant & Mooty, Minneapolis, Minnesota; member, Hennepin County, Minnesota and American Bar Associations; member Defense Research Institute and its Products Liability Committee; Instructor in Appellate Advocacy, University of Minnesota Law School.
³ See Huelke, Practical Defense Problems—The Expert’s View, infra page 203; Synder, The Seat Belt as a Cause of Injury, infra page 211.
⁴ Pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. §§ 1391-1425 (Supp. 1965-69), the Department of Transportation has promulgated motor vehicle safety standards. Among these is Standard 208 which requires a lap belt installation in each passenger car seat position and a shoulder belt for each of the two outboard front seat occupants (except in convertibles). 32 Fed. Reg. 2408, 2415 (1967).
⁵ American Safety Belt Council, THE AUTOMOTIVE SEAT BELT STORY (1970) [hereinafter cited as SEAT BELT STORY]. In note 1 it is stated: “8000 lives could be saved every year,” according to J. L. Recht, National Safety Council, 1969.”
⁶ Tourin & Garrett, Safety Belt Effectiveness in Rural California, Automotive Crash Injury Research, Aeronautical Laboratories of Cornell University (ACIR) 1960): “At least 5000 lives a year could be saved; a recent report suggests a higher figure of from 10,000 to 15,000 lives.”
⁷ Belt Safety Reappraised, 26 Family Safety (No. 2, June, 1967): “8000 to 10,000 deaths could be prevented with full belt use.” See also Stop Murder by Motor 9 (American Trial Lawyers Association monograph, Jan. 1966) [hereinafter cited as Stop Murder by Motor] in which the plaintiff’s bar advocates full belt use and estimates that it would reduce accident fatalities by over 5000 and serious injury by one-third.
to eighty percent by the use of belt restraints. This acknowledged effectiveness of belt-type restraints to reduce fatalities and minimize injuries has prompted courts in a number of states to recognize or apply the so-called “seat belt defense,” i.e., that a claimant’s recovery for personal injuries should be obviated in whole or in part by his failure to wear an available belt restraint.

However, many of the courts which have recognized the potential applicability of the seat belt defense have failed to apply it in certain cases because the defendant had not proven the *prima facie* elements of the defense. This defense, however, can be a significant source of lower damage awards, and in some jurisdictions will defeat liability, *if properly proven.* This paper will discuss the elements of a *prima facie* seat belt defense and the evidence necessary to establish them.

**History of Belt-Type Restraints**

Present day belt restraints evolved from lap belts employed to prevent ejection from race cars and were used as early as 1908 in the New York to Paris around the world race. The winning Thomas Flyer had a leather strap to keep the mechanic, who slept in the left front seat, from bouncing out of the car as it was driven over bumpy roads. Barney Oldfield reportedly used a lap belt in 1922 and by the 1950's many race drivers were using aircraft-type lap belts as required by most racing associations. The 1950 Nash Air Flyte was equipped with a cotton lap belt to secure a reclining right front passenger to the seat. In late 1955 lap belts designed to afford crash protection were first provided as optional equipment in Ford and Chrysler vehicles. In 1962,
to encourage more widespread usage of seat belts, New York State re-
quired lap belt floor anchorages in all new automobiles sold in the state,
and in 1964, two front seat lap belts were incorporated as standard
equipment by most U.S. manufacturers.\textsuperscript{15} By 1966, lap belts in the rear
seat were made standard equipment by all U.S. manufacturers. This
was two years before Federal Motor Vehicle Safety Standard 208 re-
quired manufacturers to include a lap belt for each occupant (six on
full-size cars) and a shoulder harness for the outboard front seat occu-
pants on all automobiles produced after January 1968. Finally, only
recently have restraint systems been developed which are designed spe-
cifically for infants and children.\textsuperscript{16}

\textbf{PRESENT RESTRAINT TECHNOLOGY}

Lap belts (which provide only pelvic restraint) are currently de-
signed to have a minimum loop strength of 5,000 pounds. The so-called
type 2 seat belt, commonly called a shoulder belt, (which provides both
pelvic and upper torso restraint) is designed to a loop strength of 6,000
pounds—3,000 for the pelvic loop and 3,000 pounds for the shoulder
loop. The belt webbing itself has a minimum tensile strength of 5,000
pounds for the lap belt and 4,000 pounds for the shoulder belt. Maxi-
mum webbing strength or elongation at designated belt loadings is
limited to seven inches for the lap belt and ten inches for the upper
torso or shoulder belt. Various other performance requirements are
also specified.\textsuperscript{17}

The combination lap-shoulder harnesses currently in use in the
United States employ either the two-belt system with four anchorages
(one for each belt end) or the so-called three-point system in which
the shoulder belt is connected to the lap belt near the side of the body.
Most European vehicles with front bucket seats use the three-point
system which utilizes floor-mounted belt anchorages between the seats
to obviate the buckle adjustment problems which are otherwise pre-
sented by that system. Both systems permit the wearer to use the lap
belt only—inde
dependent of the shoulder belt—so that occupants who are

\textsuperscript{15} \textbf{SEAT BELT STORY 2}.

\textsuperscript{16} The concept that infants and children are not merely small adults for purposes
of occupant packaging is relatively new. The design problems inherent in
the development of effective infant and child restraints are attributable to the
fact that infants and children are structurally different from adults in signi-
ficant ways, including bodily proportions, impact tolerances, mass, center of
gravity, skeletal development, and others. For an excellent discussion of such
biochemical and physical differences and the design demands which they create,
\textit{see} Burdi, Huelke, Snyder \& Lowrey, \textit{Infants and Children in the Adult World of
Automobile Safety Design} (American Society of Mechanical Engineers
Report No. 69-BF-10, 1969); \textit{see also} Snyder, \textit{Survey} 11.

\textsuperscript{17} Federal Motor Vehicle Safety Standards Nos. 208, 209 and 210, as found in
32 Fed. Reg. 2408 (1967), apply to seat belt assemblies and anchorages. Initial
opposed to upper torso restraint can nevertheless avail themselves of pelvic restraint.  

**Future Occupant Restraint Systems**

Even though the lap and shoulder restraints currently available have been acknowledged to afford significant life-saving and injury-reducing crash protection, studies have disclosed that many vehicle occupants are not wearing either restraint. This unfortunate situation, together with a concern for problems such as restricted occupant movement, discomfort and the motoring public's wide range of physical characteristics, have led to interest in so-called "passive" restraint systems. With these systems, the restraint is triggered automatically and requires no action by the occupant. One device is the inflatable air bag. The Department of Transportation, in a notice of proposed rule making, announced its intention to require that air bags be installed in all vehicles produced after January 1, 1972. These inflatable plastic bags would be installed in various components of the passenger compartment such as the instrument panel, door panels, or windshield header. Upon a predetermined rate of vehicle deceleration, and prior to occupant contact, the bag or bags would be mechanically or electronically inflated. They would receive and cushion the occupant's impact and begin to deflate—all within less than one-tenth of a second.

Indications are, however, that the air bag will neither eliminate the need for lap and shoulder belts, nor render irrelevant the seat belt defense. The proposed federal requirement for air bag installation will not be effective until January, 1972, if then. This deadline presupposes that the currently existing technical problems are demonstrably solvable by that date, that the design and production lead time requirements can be met, and that later dates are not established during the admin-

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18 See Snyder, Concepts in Automotive Occupant Crash Protection 6-9 (University of North Carolina Highway Research Center, Symposium, 1969) [hereinafter cited as Snyder, Concepts] for a discussion of current restraint systems and a summary of usage studies; see also Snyder, Survey 4-11.

19 See Snyder, Concepts and the studies reported in his notes 23 through 36. Although most studies indicate that actual, consistent usage of belts, on the average, for all types of driving and for all occupants, does not exceed 50%, there is considerable data available which indicates that the public is aware of the safety advantages of restraints. See, e.g., Kircher, The Seat Belt Defense—State of the Law, supra page 172.


The value of safety belts . . . in reducing deaths and injuries has been proven . . . .

A device such as the air bag has enormous advantages over traditional restraint systems. It is automatic. It distributes the heavy loads generated in motor vehicle crashes over a large area of the body enabling occupants to experience much higher crash forces without injury.

It cushions occupants during the crash.

See also Snyder, Survey 4-6, and Snyder, Concepts 15-18.


22 An impact of eight times the force of gravity (eight "g's") has been suggested for sensor initiation of bag inflation. Full inflation, of course, must occur be-
By 1972, assuming current production levels, from fifteen to twenty million new vehicles will be manufactured. These vehicles will rely primarily on seat belts for occupant restraint. Moreover, for the air bag to be most effective, it has been concluded that a lap belt should still be worn. Belt use would prevent occupant trajectory which either overshoots or "submarines" the air bag. Protection against injuries from side impact and roll-over collisions would require lap and shoulder belts. Belts would also provide the only effective occupant restraint in the event that one or more air bags failed to inflate. Malfunction might result from excessive vehicle, crash damage, maintenance or climate problems, or for other reasons. To the extent that the air bag afforded protection during only the first impact, the multiple impact situation would also present a case in which seat belt protection would be important. Seat belt restraints would also afford occupant protection at deceleration levels below that at which the air bag was designed to be triggered. In short, in these and in other cases in which seat belt restraints either render effective the intended air bag protection or afford crash protection when the air bag is not present or is otherwise ineffective or inoperative, the failure to wear seat belts will continue to have both injurious consequences and resultant legal significance.

Effectiveness of Seat Belts

Accident investigators, engineers and trauma study groups have found that belt restraints are particularly effective in several instances.
Perhaps the most conclusive findings deal with the prevention of full body ejection. Leading studies disclose that ejection from the vehicle increase chances of a fatality by almost 500 percent, with ejection occurring in over 25 percent of the fatalities studied. It has been estimated that nearly 80 percent of all ejectees could have survived the collision through the simple expedient of lap belt use.\textsuperscript{27}

Belt restraints have also been proven to prevent \textit{partial} body ejection. This occurs when the occupant's upper torso is ejected through door or window openings during a collision spin or roll-over sequence. Crushing, dangerous-to-fatal injuries often result. Partial ejection may easily occur even where the occupant is lap-belted. However, a shoulder belt, in addition to the lap restraint, will prevent upper-torso ejection.\textsuperscript{28}

Also being documented are cases in which a driver, after an initial impact, has been thrown from his seat or out of position to effectively control his vehicle during the remaining phases of the accident sequence. In these cases, a lap belt alone would permit the driver to avoid a secondary collision or loss of control by keeping him behind the steering wheel, in a position to control the vehicle's movement.\textsuperscript{29}

The reduction of impact force levels, through the deceleration of the occupant together with his vehicle, has been frequently cited as one of the most significant contributions of seat belt use. The belted occupant is "attached" to his vehicle. Therefore, he decelerates over the the collision sequence. He is thus able, as is the vehicle, to come to a more gradual stop at lower deceleration values. Add to this "stopping distance" any elongation or stretching of the belts, and passenger compartment and bodily deflection or deformation upon impact, and a total distance over which the occupant has been permitted to come to a stop can be determined. Since force levels are a function of stopping distance and stopping time, the distance afforded by seat belts has been found to significantly reduce impact forces and, thereby, injuries.\textsuperscript{30}

Belts also permit the trajectory of occupants to be controlled so that energy-absorbing vehicle components can be effectively utilized. An unrestrained front seat passenger tends to move forward, strike his knees on the instrument panel and arc upward toward the top of the

\textsuperscript{27} See Huelke, Practical Defense Problems—The Expert's View, infra page 202; Snyder, The Seat Belt as a Cause of Injury, infra page 211.

\textsuperscript{28} Id.

\textsuperscript{29} Sigel, VanWagoner & Nahum, Case Comparisons of Restrained and Non-Restrained Occupants and Related Injury Patterns (Society of Automotive Engineers paper No. 690245, 1969).

\textsuperscript{30} Id. See also Huelke, Practical Defense Problems—The Expert's View, infra page 202; Snyder, The Seat Belt as a Cause of Injury, infra page 211; Quinius v. Estrada, 448 S.W.2d 552 (Tex. Civ. App. 1969). In Quinius the plaintiff alleged that the defendant's negligence in not wearing belts caused loss of vehicle control and an accident.
A lap-belted passenger's kinematics will permit only minimum, if any, knee contact and will cause a jackknifing at the waist. With this result, the passenger contacts the instrument panel instead of the windshield or header. Moreover, instead of submarining or being carried over the energy-absorbing steering column found in newer vehicles, a lap-belted driver strikes the wheel and column axially, at the proper angle, permitting maximum column compression and effectiveness.  

The lap and shoulder belts have been demonstrated to minimize injuries and reduce fatalities not only by attenuating the force of injuries impacts, but also by reducing the number of such impacts. Of course, when properly worn, the shoulder-lap belt combination often precludes appreciable occupant contact with forward and upper passenger compartment structures. This is the case when passenger compartment integrity has not been compromised during the collision. Also, the occupant who has been kept in his seat during rollover and other violent vehicle accident maneuvers has a lesser exposure to many injury-producing areas of the vehicle compartment.

It can be seen that the lap belt or shoulder-lap belt combination may be effective in preventing or reducing injuries in many crash situations. The possibility of the use of the seat belt defense should therefore receive consideration in cases which involve non-use of belts and in which there is total or partial ejection, violent vehicle collision maneuvers, multiple impacts, or the strong possibility of crash force attenuation or effective utilization of intended energy-absorbing passenger compartment structures by use of one or more belts.

ESTABLISHING THE DEFENSE

Since the case law surrounding the seat belt defense has been fully explored in another section of this symposium, the basis upon which the courts have either accepted or refused to apply the defense need not be explored further. However, the courts which have either tacitly or expressly accepted the defense have, by their decisions, set guidelines for the defense lawyer who is interested to learn what proof is necessary to successfully prosecute the defense. The burden of proof required by those cases which have recognized the seat belt defense has been fairly well defined in terms of what proof is not sufficient. In large part this is because most of the cases have found that the proffered proof was inadequate. For instance, it is clear that a mere showing of a failure to buckle up will not be enough to establish a prima facie case. Most

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31 Id.
32 Id.
courts have not, to date, been willing to take judicial notice of the injury-reducing attributes of belt restraints despite the overwhelming data which support that conclusion. Moreover, evidence of the general effectiveness of belt restraints will not establish the effect which the use of belts would have had on the injury patterns involved in the particular case at bar. This too is needed, no doubt, through expert opinion. If any single fact emerges from the reported seat belt cases to date, both pro and con, it is not that opponents of the defense have been particularly successful. Rather, more accurately, the cases indicate that the seat belt defense advocates usually fail to introduce evidence which would tend to establish its elements. Yet, these items of proof have been identified and can be established in many cases with reasonable scientific certainty if the necessary experts are consulted and the extensive proof often required is undertaken.

An analysis of the reported seat belt decisions indicates that to establish a \textit{prima facie} case that the failure to wear an available restraint caused all, or a definable portion, of claimant's injuries, proof of the following should be considered:

1. the particular crash behavior of the subject vehicle;
2. the trajectory of the claimant's body in the accident;
3. the relationship of the vehicle crash events to occupant kinematics;
4. the particular injuries suffered;
5. the trajectory which a restrained occupant would have taken;
6. the extent of lesser injuries which the restrained occupant would have sustained as a result of the impacts he would have made with the vehicle.

In addition, evidence should be introduced tending to establish claimant's knowledge of the safety advantages of restraints, as well as the general community knowledge existing at the particular time, knowledge which claimant can reasonably be held to appreciate. Evidence which establishes these elements of proof should satisfy even the most demanding of those decisions which recognize the seat belt defense.

\textbf{Vehicle Crash Behavior}

While not always indispensible, an expert accident reconstructionist will often be able to add substantial force to the seat belt defense. His testimony concerning the vehicle's crash behavior is valuable as support for the opinions of the expert on occupant kinematics. For example, evidence from the vehicle's interior and occupant injury patterns which suggest primary driver contact with the passenger's door and "A" pillar may be even more persuasively established if the particular vehicle crash dynamics—a broadside, right-frontal intersection collision—are demonstrated and vehicle movements which would dictate contrary
occupant kinematics are negated. Moreover, a reconstruction of vehicle crash movements—rebound, rotation, collision interface sliding and the like—will be particularly valuable, if not essential, when interior occupant contact evidence or injury patterns are ambiguous or conflicting. In a case in which the occupant’s contact marks with the vehicle’s interior are not observed by investigating officers or agents (which is usually the case) and where photographs show only vehicle exteriors (as they usually do) a full understanding of the vehicle’s accident dynamics, imparted by a reconstructionist, may be crucial to proving occupant movements, contact points and sources of injuries. Depending upon what movements the vehicle makes in the crash sequence, the occupant’s crash environment will be altered and his contacts with interior components will be different. In a direct frontal impact with no vehicle rotation early in the collision sequence, significant body contact points should all lie to the immediate front of the occupant. However, in an accident where the vehicle rotates prior to relative occupant movement, important contact points and sources of injury will usually lie laterally from the occupant. Of course, a right side impact will usually produce a different occupant trajectory, relative to the vehicle, than a left side impact.

In these and a number of other instances, the reconstructionist’s opinions as to particular vehicle crash movements, based upon an accident scene and vehicle examination and analysis, will be useful to proving the seat belt defense. This may be either as a foundation for occupant trajectory opinions or as corroboration, or both. Typical accident reconstruction demonstrative aids including scene and vehicle photos, diagrams, models and photogrammetries may be utilized in this presentation. Such a construction will often differ from the reconstruction proffered in an automobile products case only in its detail. In a seat belt defense case, it may not only be important to know specific vehicle movements, it is often necessary to know when in the collision sequences—at what point in milliseconds—these movements occurred. To the extent that the timing of the vehicle crash and occupant movements becomes important, another expert may be needed—an expert in the field of vehicle-occupant crash mechanics.

**OCCUPANT TRAJECTORY**

The trajectory of the subject occupant usually must be known to prove a seat belt defense because, depending upon the path taken relative to the vehicle interior, different interior components will be struck and different injuries sustained. An expert who has studied occupant trajectories in accidents, either experimentally through controlled collision tests or as an investigator and analyst of actual vehicle accidents, is the key defense expert. By a careful analysis of the vehicle interior,
available photographs, and injury patterns, as well as of the accident scene itself if necessary, he can often determine which portions of the occupant's body made contact with which vehicle components. Once the injury-producing contacts are known, a comparison can be made with the contacts, if any, that would be made had the occupant been restrained.

The evidence available to the trajectory reconstructionist has been explained in another section of this symposium. The attorney will often discover that this expert will be especially helpful in analyzing medical records for indications or notes of body contact points, and an analysis of the injury pattern suffered. This expert should be the first retained by the defense attorney interested in exploring the seat belt defense. He can then advise whether, depending upon the evidence available to him, an accident reconstruction will also be helpful.

SEQUENCE OF VEHICLE-OCUPANT CRASH BEHAVIOR

Comparison of the injuries and trajectory taken by the unrestrained occupant with what would have been experienced by a restrained occupant is now feasible. To the extent that a totally unrestrained occupant's trajectory and injuries are being compared to those of a restrained occupant, the extent of lesser injuries may not be difficult to establish. There is no doubt that there will be cases in which no injuries would have been sustained by the restrained occupant.

A typical case, however, will be much more difficult to analyze. Where head contact by the occupant would occur whether or not he is restrained by lap belt alone, but contact would be with different vehicle components, at different force levels and at slightly different head locations depending on whether belts are used, a complex analysis of human tolerance requiring an expert in the field of biomechanics will be necessary. He can be asked to analyze the energy absorbed by the lap belt and the vehicle itself during crush. He can also analyze the kinetic energy of the occupant, the comparative force levels of body impact and the capacity of the head to withstand blows of the magnitude computed at the subject impact locations. He should then be in a position to compare the severity of head injuries which would have been incurred and to quantify the lesser head injury incurred with partial restraint.

An expert biomechanic will also be valuable to help determine occupant trajectory and injury-producing contacts. By determining the strength of rigidity of a particular vehicle interior component, and knowing the tolerance of body areas to impact trauma, he may be able to determine which alleged blows or vehicle contacts were not injury

producing. For, if the component allegedly struck was physically incapable of generating the forces needed to produce the subject injury, the biomechanic can demonstrate that the component could not have caused the injury. The injurious contact must have been elsewhere. On the other hand, if the trajectory which the occupant alleges he took is analyzed, and injuries would have been sustained that, in fact, were not sustained in the subject case, the biomechanic would be most valuable in exposing this fact.

In short, expert testimony from an accident reconstructionist and from experts in the field of occupant kinematics, vehicle crash mechanics and biomechanics may be necessary in many cases to meet the burden of proof required in a seat belt defense. The cases clearly establish that the claim of non-use alone is not enough. Proof of an exacting, technical nature must be forthcoming. And although this burden of proof and the expert testimony undoubtedly required cannot be said to be undemanding, the effectiveness of restraints to minimize injury and avoid fatalities will often make it worthwhile to undertake.

Claimant's or Community Knowledge of Belt Safety

Finally, since the seat belt defense is concerned with whether a reasonable man of ordinary prudence would have made use of belts under the circumstances, it will be necessary to show that the claimant appreciated the fact that seat belts are an effective safety device. Through adverse examination, it is easy enough to determine whether the claimant is aware of the tremendous amount of publicity that has been given to this subject. However, because the claimant's attorney will be aware that defense counsel intends to use the seat belt defense, it is not unlikely that the claimant will be reluctant to admit that he has been made aware of belt effectiveness. If this be the case, it will be necessary to establish that the community, of which the claimant was a member, was at the time of the accident possessed of this information. A check of local radio and television stations, newspapers, and public safety organizations should reveal the type of public service advertising and safety promotional campaigns that had been carried out prior to the accident. The presentation of this evidence and establishing the community-knowledge on the subject can then proceed from that point.

36 As to the application of the common law standard of ordinary care to the seat belt defense, see Kircher, The Seat Belt Defense — State of the Law, supra page 172.
37 As to the publicity given to the effectiveness of seat belts, see Kircher, The Seat Belt Defense — State of the Law, supra page 172.
38 Id.
39 Id. Even if the judge is unwilling to take judicial notice of the effectiveness of seat belts, he may be willing to note, as a matter of common knowledge, the existence of the "buckle up" safety campaign. See 31 C.J.S., Evidence § 9 (1964). Moreover, this knowledge may be imputed to the plaintiff. 31 C.J.S. Evidence § 13(e), at 844 (1964). It should be further noted that judicial
CONCLUSION

It should be clear from the preceding discussion that the seat belt defense must be carefully considered to determine if it will have merit in a particular case. In many cases the use of the defense will not be possible—either because the evidence necessary to establish it is lacking or, because the expense involved in preparing and presenting that evidence will be disproportionate to the value of the case. Defense counsel should not raise the defense if the only intent is to present evidence that the claimant was not using belts at the time of the accident and the causal connection between non-use and injuries sustained will not be shown. As has been shown in the previous section of this symposium, this type of case can only lead to further confusion as to the case-law status of the defense.\(^4\) In the proper case, however, the seat belt defense can be an effective tool for the defense counsel. The law is available, the experts needed to interpret the evidence are available; all that is necessary is that counsel carefully analyze and plan out the defense as it will be applied to the case before him.

\footnote{notice may be taken of official government documents, such as the Department of Health, Education and Welfare report, Motor Vehicle Injury Prevention Program (1966); \textit{see also} McCormick, Evidence 328-29 (1954).}

\footnote{Kircher, \textit{The Seat Belt Defense—State of Law}, supra page 172.}