CONSTITUTIONAL LAW—SIXTH AMENDMENT—DRUNK DRIVERS HAVE NO RIGHT TO JURY TRIAL—*Blanton v. City of North Las Vegas, Nevada*, 109 S. Ct. 1289 (1989).

The sixth amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ."[1] This fundamental right has been applied to the states through the fourteenth amendment's due process clause.[2] The question of the right to a jury trial was first raised in 1888 when the United States Supreme Court held that this right need not be universally granted.[3] Under the petty offense doctrine, courts have consistently held that for those crimes categorized as petty the United States Constitution does not guarantee a jury trial.[4] Although no constitutional guidelines exist, the Supreme Court has formulated various standards for classifying offenses as petty or serious.[5] This classification is more difficult when applied to the

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[1] U.S. CONST. amend. VI. The Constitution also states that "[t]he trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed . . . ." U.S. CONST. art. III, § 2.

[2] Duncan v. Louisiana, 391 U.S. 145, 149-50 (1968).

[3] Callan v. Wilson, 127 U.S. 540, 552 (1888) (some minor or petty offenses may be tried without jury). *See also* Note, *The Petty Offense Exception and the Right to a Jury Trial*, 48 FORDHAM L. REV. 205, 212-13 (1979) (tracing the origin of the petty offense exception from colonial times to present); Frankfurter & Corcoran, *Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury*, 39 HARV. L. REV. 917, 934-65 (1926) [hereinafter Frankfurter] (discussing practice of summarily adjudicating crimes punishable by minor penalties). *But see* Kaye, *Petty Offenders Have No Peers!*, 26 U. CHI. L. REV. 245 (1959) (supporting mandatory jury trial rights for all criminal offenses as intended by original framers).

[4] *Duncan*, 391 U.S. at 159 (holding that petty crimes punishable by less than six months of incarceration may be summarily adjudicated).

[5] In the federal system, 18 U.S.C. § 1 (3) (1982) defines as petty, those offenses subject to no more than six months in prison and a fine no greater than $500. However, this definition has not been literally adhered to in more recent decisions such as Muniz v. Hoffman, 422 U.S. 454 (1975), where the Court held that a $10,000 fine did not qualify a crime as serious for purposes of the sixth amendment right to jury trial. *Id.* at 475-76. *See also infra* notes 55-60 and accompanying text (analysis of *Muniz*).

Standards accepted by the federal courts have included common law tests which consider whether the offense is indictable at common law, consideration of the maximum statutory penalties, and consideration of the collateral consequences of a conviction. Note, *The Federal Constitutional Right to Trial by Jury for the Offense of Driving While Intoxicated*, 73 MINN. L. REV. 122, 129-31 (1988). The line of cases supporting the common law test include District of Columbia v. Clawans, 300 U.S. 617 (1937); District of Columbia v. Colts, 282 U.S. 63 (1930); Schick v. United States, 195 U.S. 65 (1904); Callan v. Wilson, 127 U.S. 540 (1888). In Baldwin v. New York, 399 U.S. 66 (1970) and Duncan v. Louisiana, 391 U.S. 145 (1968), a new

offense of driving under the influence of alcohol, due to society's changing views which are reflected by state legislatures' increasingly severe penalties for this offense.[6] The number of these cases is constantly growing and, as a consequence, courts are faced with the task of balancing the accused's fundamental right to a jury trial against the administrative conveniences of non-jury adjudications.[7]

In the Supreme Court's determination of whether the of-

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standard was stressed which focused on the length of possible imprisonment. Finally, in recent cases, the courts have emphasized that additional statutory penalties may be so severe as to deem the crime serious, regardless of the prison term. *See* Landry v. Hoepfner, 840 F.2d 1201 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 1540 (1989).

[6] *See* Note, *supra* note 5, at 122-23. Due to the grave consequences attached to driving under the influence of alcohol, "most states have enacted more stringent penalties for [driving while intoxicated] and have increased enforcement of these laws. In addition, many citizens' organizations publicize and attempt to combat this problem." *Id.* (footnotes omitted).

[7] *Id.* The problem is reflected by the fact that "[d]runk driving causes at least one-half of all highway deaths and accidents in the United States . . . . The very large number of intoxicated drivers poses a constant safety threat to highway users, and results in enormous economic losses." *Id.* (footnotes omitted). *See also* Annotation, *Right to Trial by Jury in Criminal Prosecution for Driving While Intoxicated or Similar Offense*, 16 A.L.R. 3D 1373, 1375 (1967 and Supp. 1986) (commenting on growing number of offenders and moral judgments attached to drunk driving by society). The United States Bureau of Justice Statistics reported the following:

LICENSED DRIVERS AND ESTIMATED ARRESTS FOR DRIVING UNDER THE INFLUENCE, BY AGE: 1975 AND 1986

[Total drivers and arrests in thousands. Represents licensed drivers and arrests for those 16 years old and over]

AGE	1975			1986			Percent change in rate, 1975-88
	Drivers	Arrests	Arrests per 100,000 drivers	Drivers	Arrests	Arrests per 100,000 drivers	
Total	129,671	946	729	158,494	1,792	1,130	55
Percent distribution	100.0	100.0	(x)	100.0	100.0	(x)	(x)
16-17 years old	3.7	1.8	352	2.6	1.5	647	84
18-24 years old	18.9	25.3	979	15.7	28.8	2,075	112
25-29 years old	12.9	15.0	847	13.0	22.0	1,909	125
30-34 years old	10.3	12.2	867	12.2	15.8	1,471	70
35-39 years old	8.5	10.6	909	10.9	11.1	1,158	27
40-44 years old	7.9	9.8	904	8.5	7.2	968	7
45-49 years old	8.0	8.9	812	6.9	4.9	805	−1
50-54 years old	7.9	7.3	675	6.3	3.4	609	−10
55-59 years old	6.8	4.6	490	6.3	2.4	434	−11
60-64 years old	5.7	2.7	347	5.9	1.6	299	−14
65 years old and over	9.5	1.8	141	11.9	1.2	118	−16

X Not applicable.

Source: U.S. Bureau of Justice Statistics, *Drunk Driving, Special Report*

fense of driving while intoxicated is subject to the constitutional guarantees of the sixth amendment, the Court has stressed the length of possible imprisonment as the most relevant criterion.[8] Because of the additional and often more onerous statutory penalties attached to this offense, however, state and federal courts have been forced to inject into their analysis criteria of a more subjective nature.[9] Therefore, the judiciary must examine the severity of all of the statutory penalties and decide whether the offense may be deemed serious or petty.[10] Recently, the United States Supreme Court addressed the issue of the right to a jury trial for individuals accused of driving under the influence of alcohol in *Blanton v. City of North Las Vegas, Nevada*.[11] The *Blanton* Court held that Nevada's statutory penalties for the first-time offense of driving under the influence of alcohol (DUI),[12] did not qualify the offense as serious for purposes of the sixth amendment.[13] Therefore, first time offenders charged with DUI under Nevada law do not have a federal constitutional right to a jury trial.[14]

The petitioners in *Blanton*, Melvin R. Blanton and Mark D. Fraley, were each charged with their first offense of DUI by the Municipal Court of North Las Vegas, Nevada.[15] DUI is a misde-

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U.S. Bureau of Justice Statistics, *Drunk Driving, Special Report, reprinted in* STATISTICAL ABSTRACT OF THE UNITED STATES 1989 (109th ed. 1989).

[8] *Baldwin*, 399 U.S. at 68-69.

[9] Some of the additional statutory penalties include license revocation, community service, educational programs, treatment programs, and fines. Note, *supra* note 5, at 138-41. All the American jurisdictions provide for such varied penalties. *See* NATIONAL HIGHWAY TRAFFIC SAFETY COMMISSION, U.S. DEPARTMENT OF TRANSPORTATION, DIGEST OF STATE ALCOHOL-HIGHWAY SAFETY RELATED LEGISLATION (4th ed. 1986), *reprinted in* Note, *supra* note 5 (listing statutory penalties for the first-time driving while intoxicated violation). The report determined that "[m]any people, and some courts, believe that license revocation is the most severe punishment for the drunk driver." *Id.* at 139 (footnote omitted). Alternatively, the report noted that "[m]any experts consider the penalties other than imprisonment to be the most substantial and effective punishments for drunk drivers." *Id.* at 141 (footnote omitted).

[10] *Id.* at 155.

[11] 109 S. Ct. 1289 (1989).

[12] Other jurisdictions, including New Jersey, refer to this offense as driving while intoxicated (DWI). *See* N.J. STAT. ANN. §§ 39:4-50, 39:4-50.8 (West Supp. 1988); LA. REV. STAT. ANN. §§ 14:98, 32:414, 32:415.1 (West 1986 & Supp. 1988).

[13] *Blanton*, 109 S. Ct. at 1294.

[14] *Id.* at 1291.

[15] Blanton v. North Las Vegas Mun. Court, 103 Nev. 623, 627, 748 P.2d 494, 496 (1987), *aff'd sub. nom.* Blanton v. City of North Las Vegas, Nevada, 109 S. Ct. 1289 (1989).

meanor under Nevada law.[16] Blanton's pretrial demand for a jury trial was denied by the municipal court.[17] Subsequently, he filed a pretrial petition for a writ of mandamus in the Eighth Judicial District Court of Nevada, challenging the municipal court's jury trial denial.[18] His petition was rejected and Blanton appealed to the Supreme Court of Nevada.[19]

Fraley was tried and convicted of DUI in the municipal court.[20] He appealed the conviction to the Nevada district court which, only a month after the denial of Blanton's motion, remanded Fraley's case for a jury trial.[21] The district court held

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16 NEV. REV. STAT. § 484.379 (1987) provides for punishment by imprisonment for a minimum two days and a maximum of six months, or in the alternative, forty-eight hours of community service, and in either case, by fines between $200 and $1,000, ninety days revocation of unrestricted driving privileges and participation in alcohol education programs. The Nevada statute proscribes driving with a blood alcohol reading above 0.10 percent or while "under the influence of intoxicating liquor." *Id.* Nevada provides the following sanctions for DUI offenders:

> 1. Any person who violates the provisions of [NEV. REV. STAT. § 484.379]:
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> (a) For the first offense within 7 years, is guilty of a misdemeanor. Unless he is allowed to undergo treatment as provided in [NEV. REV. STAT. § 484.3794], the court shall:
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> (1) Order him to pay tuition for an educational course on the abuse of alcohol and controlled substances approved by the department and complete the course within the time specified in the order, and the court shall notify the department if he fails to complete the course within the specified time;
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> (2) Unless the sentence is reduced pursuant to [NEV. REV. STAT. § 484.3794], sentence him to imprisonment for not less than 2 days nor more than 6 months in jail, or to perform 48 hours of work for the community while dressed in distinctive garb which identifies him as having violated the provisions of [NEV. REV. STAT. § 484.379]; and
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> (3) Fine him not less than $200 nor more than $1,000. . . . .
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> (b) For a second offense within 7 years, is guilty of a misdemeanor.
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> Except as provided in [NEV. REV. STAT. § 484.3794], the court shall sentence him to imprisonment for not less than 10 days nor more than 6 months in jail and fine him not less than $500 nor more than $1,000.
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> (c) For a third or subsequent offense within 7 years, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years and must be further punished by a fine of not less than $2,000 nor more than $5,000. An offender so imprisoned must be segregated insofar as practicable from offenders whose crimes were violent, and must be assigned to an institution of minimum security or, if space is available, to an honor camp, restitution center or similar facility.

Id. at §§ 484.379, 484.3792.

17 *Blanton*, 103 Nev. at 627, 748 P.2d at 496 (1987), *aff'd sub. nom.* Blanton v. City of North Las Vegas, Nevada, 109 S. Ct. 1289 (1989).

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.* at 627, 748 P.2d at 496 (referring to NEV. REV. STAT. § 266.550 (1986)).

that the Nevada statute that precluded jury trials in municipal courts was unconstitutional.[22] The City of North Las Vegas petitioned the Nevada Supreme Court for a writ of certiorari challenging the district court's decision.[23] The supreme court consolidated the above cases and held that individuals charged with the offense of DUI in Nevada do not have a federal constitutional right to jury trial.[24] The Nevada court reasoned that first time offenders face incarceration of no more than six months and a fine of no more than $1,000.[25] The United States Supreme Court granted certiorari to examine the federal constitutional right to trial by jury for persons charged under Nevada law with the offense of driving under the influence of alcohol.[26] In *Blanton*, the unanimous Court restated its previous position that certain crimes, classified as petty, are not subject to the sixth amendment jury trial right.[27] In reviewing the maximum statutory authorized incarceration period of six months, the Court presumed that the Nevada Legislature viewed DUI as such an offense.[28] Therefore, the Court held that there is no right to a jury

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22 *Id.* The district court determined that NEV. REV. STAT. § 266.550 (1987) violated both the federal and Nevada state constitutions. The Nevada constitutional right to a jury trial parallels its federal counterpart, and provides, in pertinent part: "The right of trial by Jury shall be secured to all and remain inviolate forever . . . ." NEV. CONST. art. I, § 3.

23 *Blanton*, 103 Nev. at 627, 748 P.2d at 496.

24 *Id.* at 634, 748 P.2d at 501. Several other cases which raised the same issue were consolidated by the Supreme Court of Nevada. In addition to Mr. Blanton, there were six other appellants who were denied petitions for writ of mandamus by the district court. *Id.* at 627, 748 P.2d at 496. The City of North Las Vegas appealed two orders for jury trial by the district court which declared NEV. REV. STAT. § 266.550 (1987) unconstitutional. *Blanton*, 103 Nev. at 627, 748 P.2d at 496. One other petitioner filed a writ of prohibition following the district court's denial of his petition for a writ of habeas corpus. *Id.*

25 NEV. REV. STAT. § 484.3792 (1987). *See also Blanton*, 103 Nev. at 633-34, 748 P.2d at 500-01. The Supreme Court of Nevada remanded Fraley's case with instructions to reinstate his conviction because he had pleaded guilty to DUI previous to his appeal; also, the supreme court remanded Blanton's case with instructions to proceed without a trial. *Id.* at 638, 748 P.2d at 503.

26 *See* Blanton v. City of North Las Vegas, Nevada, 109 S. Ct. 1289 (1989).

27 *Blanton*, 109 S. Ct. at 1291 (quoting Duncan v. Louisiana, 391 U.S. 145, 159 (1968)). The *Duncan* Court determined that "[i]t is doubtless true that there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision and should not be subject to the Fourteenth Amendment jury trial requirement here applied to the States. Crimes carrying possible penalties up to six months do not require a jury trial if they otherwise qualify as petty offenses . . . ." *Duncan*, 391 U.S. at 159.

28 *Blanton*, 109 S. Ct. at 1293. ("A presumption therefore exists that the Nevada Legislature views DUI as a 'petty' offense for purposes of the Sixth Amendment."). A petty offense is defined as:

> A crime, the maximum punishment for which is generally a fine or short

trial for DUI offenders charged under Nevada law.[29]

This decision followed a century of struggle by the Supreme Court and the lower federal courts to distinguish between petty and serious offenses administered under various state statutes.[30] The Supreme Court has used several criteria to differentiate between petty and serious crimes.[31] In the 1888 case of *Callan v. Wilson*,[32] the United States Supreme Court examined for the first time whether a defendant had a constitutional right to jury trial when charged with a petty offense.[33] The Court declared that there is a "class of petty or minor offenses . . . which . . . may, under the authority of Congress, be tried by the court and without a jury . . . ."[34] Further, Justice Harlan, writing for the Court, advanced the view that the constitutional right to a jury trial should be interpreted in light of common law principles.[35] Char-

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term in jail or house of correction. In some states, it is a classification in addition to misdemeanor and felony.

Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense. For purposes of determining right to jury trial, crimes carrying more than six-month sentences are "serious crimes" and those carrying less are "petty crimes."

BLACK'S LAW DICTIONARY 1032 (5th ed. 1979) (citations omitted). *See* Maita v. Whitmore, 508 F.2d 143 (9th Cir. 1974); State v. Holliday, 109 R.I. 93, 280 A.2d 333 (1971).

29 *Blanton*, 109 S. Ct. at 1291.

30 *See* Annotation, *Distinction Between "Petty" and "Serious" Offenses for Purposes of Federal Constitutional Right to Trial By Jury-Supreme Court Cases*, 26 L. Ed. 2d 916 (1971).

31 Historically, the Supreme Court has used common law tests which examine the nature of the crime and whether the offense is indictable at common law. District of Columbia v. Clawans, 300 U.S. 617 (1937); Schick v. United States, 195 U.S. 65 (1904); Callan v. Wilson, 127 U.S. 540 (1888). In more recent cases, the Court has emphasized the importance of the maximum statutory penalties, and especially the length of the possible imprisonment. Baldwin v. New York, 399 U.S. 66 (1970); Duncan v. Louisiana, 391 U.S. 145 (1968). In the lower federal courts, the gravity of the totality of additional statutory penalties is considered independently of the prison term allowed. Landry v. Hoepfner, 840 F.2d 1201 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 1540 (1989).

32 127 U.S. 540 (1888).

33 *Id.* at 547.

34 *Id.* at 555. The Court cited various common law authorities which supported the view that the crime involved in this case, conspiracy, was not of a petty or minor character. *Id.* at 555-56.

35 *Id.* at 556. In *Callan* Justice Harlan used the nature of the crime test. *Id.* Further, the Court opined:

[The jury trial] provision is to be interpreted in the light of the principles which, at common law, determined whether the accused, in a given class of cases, was entitled to be tried by a jury. It is not to be construed as relating only to felonies, or offenses punishable by confinement in the penitentiary. It embraces as well some classes of misdemeanors, the

acterizing conspiracy as a grave crime, the *Callan* majority determined that the defendant could demand a jury trial.[36]

After establishing that the common law approach is one standard for defining crimes as petty or serious, the Supreme Court went one step further in *District of Columbia v. Clawans*.[37] Nearly fifty years after *Callan*, the *Clawans* Court searched for a more objective standard and focused on the severity of the applicable penalty.[38] Recognizing society's shifting moral and social values,[39] the Court proposed looking at the maximum allowed penalties which Congress, as well as state statutes, impose without requiring a trial by jury.[40] Basing its decision on the fact that selling second-hand property without a license was not indictable at common law and that the ninety-day maximum imprisonment was not an unusual punishment for a petty offense, the *Clawans* Court ruled that under the Constitution such offenders may be tried without a jury.[41]

> punishment of which involves or may involve the deprivation of the liberty of the citizen.

Id. at 549.

[36] *Id.* at 556. The unanimous Court relied on the fact that conspiracy was an indictable offense at common law. *Id.* Based on the authorities cited, conspiracy was found to be a crime affecting the public at large, and thus defined as grave. *Id.* The right to a jury trial was granted and made applicable to all levels of courts, including municipal courts. *Id.* at 556-57.

The *Callan* approach was later applied in District of Columbia v. Colts, 282 U.S. 63 (1930) (prosecution for driving recklessly, which was an indictable offense at common law, mandated jury trial) and Schick v. United States, 195 U.S. 65 (1904) (framers' intent was to exclude petty criminal offenses from requirement of a jury trial and that constitutional rights must be interpreted based on common law principles).

[37] 300 U.S. 617 (1937).

[38] *Id.* at 625.

[39] *Id.* at 627. Justice Stone expressed the Court's concern with using exclusively common law principles predating the Constitution:

> We are aware that those standards of action and of policy which find expression in the common and statute law may vary from generation to generation. Such change has led to the abandonment of the lash and the stocks, and we may assume, for present purposes, that commonly accepted views of the severity of punishment by imprisonment may become so modified that a penalty once thought to be mild may come to be regarded as so harsh as to call for the jury trial, which the Constitution prescribes, in some cases which were triable without a jury when the Constitution was adopted.

Id.

[40] *Id.* at 628.

[41] *Id.* at 625. Indirectly, the *Clawans* Court referred to the offense of DUI by citing to Klinges v. Court of Common Pleas of Ocean County, 4 N.J. Misc. 7, 130 A. 601 (1925) which upheld the practice of trial without jury, given a maximum six-month imprisonment penalty. *Clawans*, 300 U.S. at 628 n.6. *See also* District of Co-

In 1968, the Supreme Court expanded the importance of the authorized penalty in setting boundaries between petty and serious offenses in *Duncan v. Louisiana*.[42] Justice White, writing for the majority, reasoned that a crime punishable by a maximum of two years in prison is serious and under the sixth amendment the accused was entitled to a jury trial.[43] The Court reaffirmed the existence of a category of petty crimes which do not mandate sixth amendment jury trial protection.[44] The Court, however, recognized the need for a line of demarcation between petty and serious crimes due to the absence of explicit constitutional boundaries.[45] Although the majority acknowledged the obligation of the judiciary to define that boundary, the *Duncan* Court declined to enunciate a test to determine whether a crime is petty or serious.[46] Significantly, Justice White stated that the authorized penalty constituted a major factor in determining the nature of an offense, and the penalties attached by the legislature are a good indication of society's view of a particular crime.[47] Finally, the *Duncan* Court referred to the need for objective criteria, such as existing laws and practices in the nation, to guide the determination of whether the authorized incarceration period or the severity of other punishment were sufficient in themselves to subject a trial to the mandates of the sixth amendment.[48]

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lumbia v. Colts, 282 U.S. 63 (1930) (addressing DUI in its discussion of reckless driving).

42 391 U.S. 145 (1968).

43 *Id.* at 149, 161-62. The case also stands for the proposition that the sixth amendment right to jury trial applies to the states via the fourteenth amendment. *Id.* at 149. The Court reasoned:

> Because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee.

Id. (footnote omitted).

44 *Id.* at 159.

45 *Id.* at 160.

46 *Id.* at 161. Simple battery, punishable by a prison term of up to two years, was easily identified as serious, and therefore, the offender should be tried by a jury and not a judge. *Id.* at 161-62.

47 *Id.* at 159-60 (citing District of Columbia v. Clawans, 300 U.S. 617, 628 (1937)).

48 *Id.* at 161. In support of this proposition, the *Duncan* Court referred to District of Columbia v. Clawans, and further explained:

> In the federal system, petty offenses are defined as those punishable by no more than six months in prison and a $500 fine. In 49 of the 50 States crimes subject to trial without a jury, which occasionally include simple battery, are punishable by no more than one year in jail. Moreover, in the late 18th century in America crimes triable without a jury

The search for a bright line test culminated in *Baldwin v. New York*,[49] where the Court held that the maximum authorized penalty is the one criterion most relevant in determining the gravity of an offense.[50] Like *Duncan*, the *Baldwin* Court utilized the congressional penalties attached to petty offenses, as well as states' practices, as a reference point.[51] In a plurality opinion, Justice White set the dividing line between petty and serious crimes based on the length of the maximum authorized prison term.[52] Offenses carrying prison terms of more than six months could not, in Justice White's opinion, be classified as petty and the right to trial by jury would, therefore, be recognized.[53]

The *Baldwin* threshold continued to be applied within the framework established by Congress in its definition of a petty offense[54] until *Muniz v. Hoffman*.[55] The 1975 *Muniz* decision stepped out of the boundaries set at the time by 18 U.S.C. § 1, when the Court held that a crime carrying a $10,000 fine, but no

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> were for the most part punishable by no more than a six-month prison term, although there appear to have been exceptions to this rule.

Id. (footnotes and citations omitted). The *Blanton* Court, however, recognized that "[a]lthough Congress no longer characterizes offenses as 'petty,' . . . an individual facing a maximum prison sentence of six months or less remains subject to a maximum fine of no more than $5,000." Blanton v. City of North Las Vegas, Nevada, 109 S. Ct. 1289, 1294 (1989).

49 399 U.S. 66 (1970) (involving a misdemeanor charge, punishable by a maximum prison term of one year).

50 *Id.* at 68 (citing Frank v. United States, 395 U.S. 147, 148 (1969); Duncan v. Louisiana, 391 U.S. 145, 159-161 (1968); District of Columbia v. Clawans, 300 U.S. 617, 628 (1937)).

51 *Id.* at 70-71. Specifically, the Court cited 18 U.S.C. § 1 (1982) which defined petty offenses as those subject to a maximum six months in prison and $500 fine. *Baldwin*, 399 U.S. at 70-71. As further support, *Baldwin* relied on the fact that the Court found only one instance where a state denied jury trial for crimes punishable by more than six months imprisonment. *Id.* at 71.

52 *Id.* at 73-74. The *Baldwin* Court explained that the burden of possible imprisonment of less than six months outweighed the benefits resulting from speedy, less costly non-jury trials. *Id.* at 73. Justice White then stated:

> We cannot, however, conclude that these administrative conveniences, in light of the practices that now exist in every one of the 50 States as well as in the federal courts, can similarly justify denying an accused the important right to trial by jury where the possible penalty exceeds six months imprisonment.

Id. at 73-74.

53 *Id.*. In a concurring opinion, Justice Black stated that the sixth amendment and article III, § 2 of the Constitution applied to all crimes, universally guaranteeing the right to jury trial. *Id.* at 74-76 (Black, J., concurring).

54 *See, e.g.*, Codispoti v. Pennsylvania, 418 U.S. 506 (1974); Argersinger v. Hamlin, 407 U.S. 25 (1972).

55 422 U.S. 454 (1975). The crime involved in *Muniz*, criminal contempt, was subject to penalty of $10,000. *Id.* at 457.

imprisonment, was not a serious offense.[56] Consequently, the possibility of punishment unaccompanied by imprisonment, but exceeding the maximum fine set by Congress in its definition of a petty crime, did not automatically entitle the accused to a jury trial.[57] Significantly, the *Muniz* Court noted the drastically different consequences attached to incarceration as compared to punishment by fines only.[58] The *Muniz* Court failed to enunciate a clear test for determining the right to a jury trial. The Court posited, however, that the congressional definition was not the only reference point in defining petty and serious crimes, and emphasized the significance of the maximum authorized period of incarceration.[59] In dissent, Justice Douglas reaffirmed the position he set forth in *Baldwin* that all criminal prosecutions demand the sixth amendment jury trial guarantee, regardless of the penalties involved.[60]

Recognizing the conflict which existed in both federal[61] and state courts[62] in categorizing DUI as a petty or serious offense,

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56 *Id.* at 477. *Muniz* also reaffirmed the Court's view that criminal contempt may constitutionally be tried without a jury. *Id.* at 475.

57 *Id.* at 476. This Court's view is consistent with the *Duncan* proposition that setting the boundary between petty and serious crimes requires "attaching different consequences to events which, when they lie near the line, actually differ very little." Duncan v. Louisiana, 391 U.S. 145, 161 (1968).

58 *Muniz*, 422 U.S. at 477.

59 *Id.* at 476-77. For a discussion of *Muniz*, see Note, *Constitutional Law-Criminal Procedure-Criminal Contempt-The Right to Trial by Jury*-Muniz v. Hoffman, 1976 B.Y.U. L. REV. 549.

60 *Muniz*, 422 U.S. at 480 & n.6 (Douglas, J., dissenting) (citing Codispoti v. Pennsylvania, 418 U.S. 506 (1974); Baldwin v. New York, 399 U.S. 66 (1970); Frank v. United States, 395 U.S. 147 (1969)). *See also* Kaye, *supra* note 2 (espousing the idea that the framers also intended the universal guarantee of jury trial to all offenses).

61 *See* Landry v. Hoepfner, 840 F.2d 1201 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 1540 (1989). In *Landry* the United States Court of Appeals for the Fifth Circuit focused on the offense of driving while intoxicated and concluded that this crime was not a serious one for purposes of sixth amendment trial by jury provisions. *Id.* at 1202. The *Landry* defendant faced possible maximum penalties of six months incarceration, a $500 fine, enrollment in a substance-abuse program, and a sixty-day license suspension. *Id.* at 1203 & n.1, 1216 (citing LA. REV. STAT. ANN. §§ 14:98, 32:414 (West 1984)).

62 If afforded constitutional or statutory power, states may grant jury trial rights in all criminal prosecutions, including petty offenses. *Id.* Supreme Court Justices hold varied opinions on the issue of whether states are bound by the petty offense doctrine, as noted by Judge Garwood in *Landry*:

> Indeed, Justices Black and Douglas were of the view that the Sixth Amendment and Article III, Section 2, made no distinction between "petty" and "serious" crimes. Chief Justice Burger was of the view that, at least for purposes of application of the Sixth Amendment to the states through the Fourteenth Amendment, the jury trial guarantee extended

the Supreme Court in *Blanton v. City of North Las Vegas, Nevada*,[63] addressed the issue of whether a person charged with DUI under Nevada law had a federal constitutional right to jury trial.[64] Writing for a unanimous Court, Justice Marshall reviewed the penalties attached to the first-time offense of DUI under Nevada's drunk driving statute.[65] The Court noted that the statute provided for imprisonment of a maximum term of six months, or forty-eight hours of community service.[66] Additional penalties for each case included: (i) fines of no more than $1,000; (ii) ninety days revocation of some driving privileges; and (iii) mandatory attendance at an alcohol education course.[67] Because the maximum authorized incarceration period did not classify DUI as a severe offense, the Court held that DUI offenders were not entitled to a jury trial.[68]

After acknowledging the existence of a category of petty crimes not mandating a jury trial,[69] the majority summarized the criteria which is used in determining the gravity of a crime.[70] The *Blanton* Court reviewed the common law tests dating back to 1888 in *Callan*, but focused on the *Duncan* and *Baldwin* era which signaled the switch to more objective criteria.[71] The Court agreed with the *Duncan* and *Baldwin* views and determined that

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> only to "serious" crimes, which could include those punishable by a year's imprisonment. Justice Harlan, who had dissented in *Duncan*, thought "it appropriate to draw the line at six months in federal cases, although" he "would not encumber the States by this requirement." Justice Stewart likewise dissented, stating that he "substantially agree[d]" with Justice Harlan.

Id. at 1206 n.11 (citing Baldwin v. New York, 399 U.S. 66 (1970)). The court also noted that the majority of the states do not follow the petty offense doctrine, but concluded that thirty-two jurisdictions do classify DUI according to the Supreme Court's definition of petty offenses. *Id.* at 1219.

63 109 S. Ct. 1289 (1989).

64 *Id.* at 1291. The Supreme Court relied on Duncan v. Louisiana, 391 U.S. 145 (1968) which held that the sixth amendment right to trial by jury is applied to the states via the fourteenth amendment's due process clause. *Blanton*, 109 S. Ct. at 1291 n.4.

65 *Id.* at 1291 (citing NEV. REV. STAT. §§ 484.379, 484.3792 (1987)).

66 *Id.*

67 Justice Marshall also noted that the statute permits increased penalties for repeat offenders, including imprisonment of one to six years for the third DUI offense. *Id.* at 1291 & n.2 (citing NEV. REV. STAT. § 484.3792(1) (c) (1987)).

68 *Id.* at 1292-93.

69 *Id.* at 1291 (citing Duncan v. Louisiana, 391 U.S. 145 (1968); District of Columbia v. Clawans, 300 U.S. 617 (1937); and Callan v. Wilson, 127 U.S. 540 (1888)).

70 *Id.* at 1291-92.

71 *Id.*

the severity of the maximum penalty authorized was the most relevant factor indicating the legislature's and society's view of a particular crime.[72] Further, Justice Marshall stressed that the judiciary must defer to the legislature's judgement of the gravity of a crime as reflected in the maximum penalty allowed.[73] The *Blanton* Court expanded the meaning of the word "penalty" in relation to the definition of crimes as petty or serious.[74] Justice Marshall emphasized that the additional penalties attached to the maximum prison term also reflected the legislature's view of the crime.[75] The Court explained, however, that while additional penalties such as fines and probation are significant, incarceration is still the most important factor because of its infringement on one's liberty.[76]

The majority agreed with the bright line test enunciated in *Baldwin* which established that a defendant is entitled to a jury trial if the sanctions included a penalty of more than six months incarceration.[77] The *Blanton* Court, however, clarified that less than six months incarceration, while not automatically qualifying an offense as petty, creates a presumption to that effect.[78] To assure that the constitutional right to a jury trial could not be denied simply on the basis of the six-month test, Justice Marshall emphasized that the additional statutory penalties must also be considered.[79] Admitting that these standards are not precise, the Court examined both the length of the prison sentence imposed on first-time DUI offenders, as well as the severity of the other possible penalties.[80] Because the first-time DUI offense carried a

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72 *Id.* at 1292 (citing Baldwin v. New York, 399 U.S. 66 (1970)). The *Blanton* majority agreed with Landry v. Hoepfner, 840 F.2d 1201 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 1540 (1989) (emphasizing importance of the maximum penalty assigned to crimes).

73 *See Blanton*, 109 S. Ct. at 1292.

74 *Id.*

75 *Id. See* United States v. Jenkins, 780 F.2d 472 (4th Cir.), *cert. denied*, 476 U.S. 1161 (1986).

76 *Blanton*, 109 S. Ct. at 1292. The unanimous Court reasoned that "[i]ndeed, because incarceration is an 'intrinsically different' form of punishment . . . it is the most powerful indication of whether an offense is 'serious.' " *Id.* (citing Muniz v. Hoffman, 422 U.S. 454, 477 (1975)).

77 *Id.* The Court noted that in situations where there is no maximum penalty set by the legislature, the relevant factor is the penalty actually imposed. *Id.* at 1292 n.6. *See also supra* notes 49-53 and accompanying text (discussing *Baldwin*).

78 *Blanton*, 109 S. Ct. at 1293.

79 *Id.* Justice Marshall explained that "[i]n performing this analysis, only penalties resulting from state action, e.g., those mandated by statute or regulation, should be considered." *Id.* 1293 n.8 (citing Note, *supra*, note 5, at 149-50).

80 *Id.* at 1293-94.

maximum of six months authorized prison term, the Court concluded that the Nevada Legislature deemed this offense to be petty.[81] Justice Marshall rejected petitioners' arguments that the alternative forty-eight hours of community service, the possible license suspension, and the $1,000 fine, were so severe as to trigger the sixth amendment right to jury trial.[82]

The *Blanton* Court briefly mentioned that offenders must perform community service while wearing clothing which identifies them as DUI violators and summarily concluded that the embarrassment of wearing a special outfit is less burdensome than a six-month jail term.[83] Such form of branding, however, may be viewed as outrageous by modern society standards and may exceed the federal constitutional limit on cruel and unusual punishment.[84]

The Supreme Court has interpreted the cruel and unusual punishment clause of the eighth amendment as a limitation on the states' power to punish.[85] The clause extends its protection against more than just barbaric forms of punishment:[86] "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man."[87] While declaring that many types of punishment such as fines, imprisonment, and even death may be acceptable depending on the crime, the Court has held that penalties outside traditional forms are subject to scrutiny under the eighth amendment.[88] In *Weems v. United States*,[89] the Court recognized that there is no precise definition for cruel and unusual

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81 *Id.*

82 *Id.* The Court was not impressed by the prohibition on plea bargaining, or the ninety-day license suspension which may in fact run concurrently with the prison sentence. *Id.* at 1293. Further, the Court stressed that the "$1,000 fine, . . . is well below the $5,000 level set by Congress in its most recent definition of a 'petty' offense . . . ." *Id.* at 1294 (citing 18 U.S.C. § 1 (1982 & Supp. IV)).

83 *Id.* at 1293 & n.10.

84 U.S. CONST. amend. VIII dictates: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." The eighth amendment has been applied to the states through the fourteenth amendment's due process clause. Robinson v. California, 370 U.S. 660, 666-67 (1962). *See also* Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 493 (1977) (commenting on the eighth amendment ban on cruel and unusual punishment as applied to state action).

85 Trop v. Dulles, 356 U.S. 86, 100 (1958) (expatriation for desertion).

86 *Id.* at 101. *See* Solem v. Helm, 463 U.S. 277, 284 (1983) (life sentence without possibility of parole triggered by defendant's seventh non-violent felony).

87 *Trop*, 356 U.S. at 100.

88 *Id.* at 101.

89 217 U.S. 349 (1910) (involving a 15-year prison term combined with additional penalties for falsifying official documents).

punishment and more importantly that any definition varies with the times as "public opinion becomes enlightened by a humane justice."[90] The Supreme Court then stated that the eighth amendment mandates punishment proportional to the crime committed.[91]

The *Blanton* Court could have, *sua sponte*, considered whether the branding of an offender as a drunk driver, while performing community service, would constitute a grossly disproportionate penalty for the first offense of DUI.[92] To achieve the level of constitutional deprivation, a penalty "must not involve the unnecessary and wanton infliction of pain" and "the punishment must

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90 *Id.* at 378. As Justice Brennan noted, the protection afforded by the Constitution depends on "the adaptability of its great principles to cope with the problems of a developing America." Brennan, *supra* note 84, at 495.

The concept of a progressive interpretation has been also espoused in *Trop*, 356 U.S. at 101 (stating that the scope of the eighth amendment is not static); Gregg v. Georgia, 428 U.S. 153, 173, *reh'g denied*, 429 U.S. 875 (1976) (requiring a flexible and dynamic interpretation of the eighth amendment in line with contemporary standards of decency).

91 *Weems*, 217 U.S. at 367. Justice McKenna found the punishment in *Weems* excessively cruel and unusual, and therefore, in violation of the Constitution. *Id.* at 382. Justice McKenna stated:

> Such penalties for such offenses amaze those who have formed their conception of the relation of a state to even its offending citizens from the practice of the American commonwealths, and believe that it is a precept of justice that punishment for crime should be graduated and proportioned to offense.

Id. at 367. *See* Solem v. Helm, 463 U.S. 277, 284-90 (1983); Ingraham v. Wright, 430 U.S. 651, 667 (1977); Gregg v. Georgia, 428 U.S. 153, 169-73 (1976); Robinson v. California, 370 U.S. 660, 666-67 (1962). For a discussion of the proportionality doctrine see Note, *Cruel and Unusual Punishment: The Taming of the Proportionality Test*, 7 RUT.-CAM. L.J. 722 (1976).

Substantial development of the proportionality doctrine has also taken place at state and lower federal court levels. *See, e.g.*, United States v. Washington, 578 F.2d 256, 258-59 (9th Cir. 1978) (punishment is unconstitutional when grossly out of proportion to severity of crime and when it shocks the sense of justice); Adams v. Carlson, 488 F.2d 619, 635-36 (7th Cir. 1973) (disproportionate punishment imposed in or outside the prison is unconstitutional); Jordan v. Fitzharris, 257 F. Supp. 674, 679 (N.D. Ca. 1966) (excessive sanctions shock the conscience in light of current concepts of decency).

State courts have also adopted the proportionality doctrine. *See, e.g.*, State v. Des Marets, 92 N.J. 62, 455 A.2d 1074 (1983); Schmidt v. State of Nevada, 94 Nev. 665, 584 P.2d 695 (1978); *In re* Lynch, 8 Cal. 3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972); State v. Muessig, 198 N.J. Super. 197, 486 A.2d 924 (App. Div. 1985), *cert. denied*, 101 N.J. 237, 501 A.2d 912 (1985).

92 In previous cases the Court has proposed several objective criteria for its analysis of possible violations of the last clause of the eighth amendment, including: "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Solem*, 463 U.S. at 292.

not be grossly out of proportion to the severity of the crime."[93] In determining whether disproportionality exists, courts have looked to the public attitude towards a given crime and its punishment.[94]

The DUI offense has met in recent years with great public concern. The dangers involved in driving while intoxicated have been recognized by courts as well as groups such as "Mothers Against Drunk Driving" and "Students Against Drunk Driving."[95] Intoxicated drivers are currently viewed as a serious danger to themselves and to all others using the public roadways.[96] In light of the public sentiment against DUI offenders it is doubtful that the Supreme Court would find the clothing requirement of the Nevada statute grossly disproportionate with the severity of the crime.

The Supreme Court has, however, supported the view that punishment must also not be senseless or unnecessary.[97] Lower federal courts and state courts have also affirmed that punishment which serves no penological aim may violate the Constitution.[98] Therefore, the clothing requirement may be construed as

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[93] *Gregg*, 428 U.S. at 173 (citing Furman v. Georgia, 408 U.S. 238 (1972); Weems v. United States, 217 U.S. 349 (1910)).

[94] *Id.* (contemporary values regarding the punishment imposed are relevant to the application of the eighth amendment).

[95] United States v. Jenkins, 780 F.2d 472, 474 (4th Cir.), *cert. denied*, 476 U.S. 1161 (1986).

The New Jersey Supreme Court, for example, has expressed in very strong words the public policy against driving while intoxicated. State v. Tischio, 107 N.J. 504, 527 A.2d 388 (1987). Referring to the New Jersey statute, N.J. STAT. ANN. §§ 39:4-50 (West 1986), the court stated that the purpose of the statute is to eliminate drunk-drivers from the state's roadways and "to curb the senseless havoc and destruction caused by intoxicated drivers." *Id.* at 512, 527 A.2d at 392-93. Justice Handler stated:

> The necessity for stringent drunk driving laws has received widespread and nearly unanimous support in an increasing crescendo in the last several decades throughout this nation. The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield, and exceeds the death total of all our wars. Traffic deaths in the United States commonly exceed 50,000 annually and approximately one-half of these fatalities are alcohol related. Drastic remedies were necessary to reduce the senseless carnage on our highway.

Id., 527 A.2d at 392 (quoting State v. D'Agostino, 203 N.J. Super. 69, 72, 495 A.2d 915, 917 (Law Div. 1984)). *See* State v. Fearick, 69 N.J. 31, 350 A.2d 227 (1976); State v. Housman, 131 N.J. Super. 478, 330 A.2d 598 (App. Div. 1974).

[96] *See* Landry v. Hoepfner, 840 F.2d 1201, 1220 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 1540 (1989) (Garza, J., dissenting); *Tischio*, 107 N.J. at 512, 527 A.2d at 392.

[97] Coker v. Georgia, 433 U.S. 584, 592 (1977); *Gregg*, 428 U.S. at 173.

[98] At the lower federal court level it has been held that sentences are excessive if

a senseless form of public humiliation. The Nevada Legislature's effort to curb the crime of driving under the influence of alcohol would not be greatly enhanced by this rather peculiar and apparently unnecessary sanction. Consequently, such punishment may be found unconstitutional under the "cruel and unusual" clause of the eighth amendment.

By focusing strictly on first-time offenders, the Supreme Court in *Blanton* left open the issue of whether the Constitution requires that a repeat offender have the right to a trial by jury.[99] Additionally, the Court refused to consider other states' statutory penalties for driving while intoxicated by narrowly focusing on whether the State of Nevada violated the Constitution by denying the petitioners' requests for jury trials.[100] Justice Marshall concluded that the sum of all the statutory penalties attached to the first offense of driving under the influence of alcohol did not suggest the legislature's intent to deem such an offense as serious.[101] Therefore, first-time offenders charged under the Nevada statute,[102] are not entitled to a jury trial under the sixth amendment.[103]

A century after *Callan v. Wilson*, the Supreme Court continues to distinguish between serious and petty crimes for purposes of the sixth amendment right to jury trial.[104] The Court has uni-

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there is a purposeless infliction of pain and suffering. United States v. Washington, 578 F.2d 256, 258 n.3 (9th Cir. 1978). Sentences may also be characterized as violating the Constitution when their severity goes beyond accomplishing legitimate penal aims. Jordan v. Fitzharris, 257 F. Supp. 674, 679 (N.D. Ca. 1966). Finally, in Mickle v. Henricks, 262 F. Supp. 687 (D.C. Nev. 1918) the district court held that the Constitution also proscribes degrading and humiliating sanctions which fail to accomplish the penal purpose of "resumption of upright and self-respecting life." *Id.* at 691.

At the state court level the concept of equating excessive punishment with the purposeless and needless imposition of pain and suffering has also been accepted. *See* State v. Vaccaro, 121 R.I. 788, 403 A.2d 649 (1979); Serna v. Hodges, 89 N.M. 351, 552 P.2d 787 (1976).

99 Blanton v. City of North Las Vegas, Nevada, 109 S. Ct. 1289, 1294 & n.12 (1989).

100 *Id.* at 1294 n.11. The Court relied on Martin v. Ohio, 480 U.S. 228 (1987) which held that the issue of whether a state's practice violates the Constitution is not resolved by cataloguing the other states' practices. *Blanton*, 109 S. Ct. at 1294 n.11.

101 *Id.* at 1294.

102 *See* NEV. REV. STAT. § 484.379 (1987).

103 *Blanton*, 109 S. Ct. at 1294.

104 For a discussion of the *Callan* decision, see *supra* notes 33-38 and accompanying text.

formly held that certain crimes mandate a trial by jury.[105] Offenses which carry a maximum authorized prison term of more than six months exceed the *Baldwin v. New York* threshold, and therefore, can be easily identified as serious, triggering sixth amendment protection.[106] Those offenses carrying less than a six-month imprisonment period, however, are difficult to categorize.[107] Both federal and state courts have shown deference to the legislature's view of crimes as reflected in the statutory penalties, but the burden remains on the courts to determine if a crime is petty and whether the right to jury trial may be denied.[108] This process demands the insertion of the judiciary's own moral and social values, and thus, it has resulted in unclear and inconsistent standards.[109]

The more recent Supreme Court decisions of *Baldwin* and *Muniz* have de-emphasized common law tests in reviewing the nature of a crime as well as whether the offense was indictable at common law.[110] Instead, the Supreme Court and the lower federal courts have focused on the statutory penalties attached to a crime.[111] The *Blanton* decision followed this trend by stressing that in addition to the maximum authorized prison term, courts must also examine the additional penalties attached to the violation. In regard to the particular offense of DUI, the Court in *Blanton* quite subjectively attached little significance to such penalties as license suspension and mandatory community service.[112] Although the Court dismissed the requirement that distinctive garb be worn while performing community service, this form of punishment may trigger the protection of the eighth amendment.

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105 *See, e.g.*, Duncan v. Louisiana, 391 U.S. 145 (1968); District of Columbia v. Clawans, 300 U.S. 617 (1937); Schick v. United States, 195 U.S. 65 (1904).

106 *See* Baldwin v. New York, 399 U.S. 66 (1970).

107 *See supra* notes 9-10 and accompanying text (discussing statutory penalties which may attach to the DUI offense in addition to imprisonment).

108 *See Blanton*, 109 S. Ct. at 1293.

109 *See* Note, *supra* note 5. The author posited that "[a]llowing public attitudes and the courts' moral judgments to influence the decision creates an undesirable inconsistency, because what one court or community considers a serious offense may be a petty offense in the next town." *Id.* at 150 n.180.

110 *See* Codispoti v. Pennsylvania, 418 U.S. 506 (1974).

111 *See, e.g.*, *Blanton*, 109 S. Ct. 1289; Muniz v. Hoffman, 422 U.S. 454 (1975); Frank v. United States, 395 U.S. 147 (1969); Landry v. Hoepfner, 840 F.2d 1201 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 1540 (1989).

112 *Blanton*, 109 S. Ct. at 1293-94. For example, in *Blanton* the "DUI offender may be ordered to perform 48 hours of community service dressed in clothing identifying him as a DUI offender." *Id.* at 1293.

The ban against cruel and unusual punishment protects individuals against purposeless sanctions such as public humiliation.

Because state statutes vary in respect to the penalties attached to DUI, the lack of an objective standard makes it very difficult to foresee whether a particular DUI offense should be tried by jury. Even more alarming is the fact that the *Blanton* Court remained silent on the safety issues and the economic losses related to driving while intoxicated.[113] The Court could have determined that the crime is a *malum in se* offense, and therefore, the fundamental right to trial by jury should have been granted regardless of the penalties involved.[114] The *Blanton* Court, however, held that the Nevada Legislature did not intend to classify DUI as a serious offense. Further, the Court's decision in *Blanton*, by its own admission, is narrowly applicable to the Nevada statute alone. Consequently, the search for more objective criteria and consistent standards to determine the seriousness of this crime must continue.

The right to a jury trial, as provided by the Constitution, is a fundamental right which should not be jeopardized by a subjective definition of crimes as petty or serious. Additionally, the administrative convenience of speedy and inexpensive trials should not strip individuals of their constitutional protections.[115] Decisions such as *Blanton* necessarily affect the administration of the criminal justice system. The courts, however, should be liberal in enforcing the specific guarantees of the Bill of Rights against state action.[116] In the words of Justice Brennan, "there exists in modern America the necessity for protecting all of us from arbitrary action by governments more powerful and more pervasive than any in our ancestors' time."[117] Therefore, in order to assure that the right to a jury trial is not indiscriminately denied, the legislature should clearly define petty and serious crimes, or the judiciary should enunciate a precise and consistent standard.

Florina A. Moldovan

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113 *See Landry*, 840 F.2d at 1220 (Garza, J., dissenting). The *Landry* dissent rightfully argued that DUI is viewed today as a serious problem with grave consequences flowing from driving a motor vehicle under the influence of alcohol. *Id.*

114 *Id.* A *malum in se* is defined as "[a] wrong in itself; an act or case involving illegality from the very nature of the transaction, upon principles of natural, moral, and public law." BLACK'S LAW DICTIONARY 865 (5th ed. 1979). *See* Grindstaff v. Tennessee, 214 Tenn. 58, 377 S.W.2d 921 (1964).

115 *Blanton*, 109 S. Ct. at 1292-93.

116 *See* Brennan, *supra* note 5, at 493-95.

117 *Id.* at 495.