

Tulsa Law Review

Volume 37
Number 2 *Native American Law Essays on
Integrating Indian Law into Law School
Curricula*

Volume 37 | Number 2

Winter 2001

Not Quite Foucault's Pendulum: An Analysis of Gruntz and Bankruptcy Court Jurisdiction over the Automatic Stay

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Recommended Citation

Alex Hart, *Not Quite Foucault's Pendulum: An Analysis of Gruntz and Bankruptcy Court Jurisdiction over the Automatic Stay*, 37 Tulsa L. Rev. 607 (2001).

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NOTE

NOT QUITE FOUCAULT'S PENDULUM: AN ANALYSIS OF GRUNTZ AND BANKRUPTCY COURT JURISDICTION OVER THE AUTOMATIC STAY

I. INTRODUCTION

As strange as it sounds, the only fixed point in the universe is a twenty-eight kilogram "silver ball with a needle point," that swings from a sixty-seven meter wire attached to the ceiling of the Conservatoire des Arts et Métiers in Paris, France: the famed Foucault's pendulum.¹ Jean Bernard Leon Foucault, the pendulum's inventor, designed it as a means to demonstrate the Earth's rotation.² It swings, perpetually, deriving its momentum from the movements of the Earth and the universe.³ "The pendulum, privileged, looms over the lunacy, scorn, and fear of the world because [its] point of attachment, alone in the universe, is fixed—wherever you choose to put it."⁴

Bankruptcy courts, with their exclusive jurisdiction over the bankrupt debtor's estate,⁵ are a fixed point in the universe of parties interested in the debtor's assets. In this way they resemble Foucault's pendulum: "the only stable point in the cosmos."⁶ Yet, in many ways, bankruptcy courts are not the sole fixed point in the bankruptcy universe. In certain instances, that universe revolves around other fixed points. One such example concerns the automatic stay and its

1. Geoffrey Sauer, *Foucault's Pendulum: Eco's Second Detective Thriller* (Feb. 12, 1990) (available at <<http://eserver.org/home/geoff/cv/pendulum.html>>) (accessed Nov. 16, 2001) (reviewing Umberto Eco, *Foucault's Pendulum* (Harcourt Brace Jovanovich 1988)).

2. *Id.*

3. *Id.*

4. *Id.*

5. 28 U.S.C.A. § 1334(a) (West 2001). Subsection (a) of the statute gives district courts exclusive and original jurisdiction for bankruptcy cases. *Id.* However, subsection (b) gives district courts "original, but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising to or related to a case under title 11" notwithstanding an act of Congress. *Id.*

6. Sauer, *supra* n. 1.

applicability to criminal actions brought against a debtor.

Congress clearly states, in section 362 of the Bankruptcy Code, that the automatic stay does not protect a debtor from "the commencement or continuation of a criminal action or proceeding."⁷ What is less clear is whether state courts have jurisdiction to determine the applicability of the automatic stay, or if that job is solely within the jurisdiction of the bankruptcy courts. Whether applicability jurisdiction is shared or not, courts have wrestled with whether the stay should apply in situations where the state's main purpose in prosecuting, sentencing or revoking the probation of the debtor, is to collect a debt.⁸

These situations arise most often in the context of domestic law when the state prosecutes a "dead-beat" dad for failure to pay child-support.⁹ When the state uses the threat of imprisonment to force a debtor to meet the dependent support payment terms imposed by a divorce decree, the state appears to promote both civil and criminal goals by acting on both the child's and its citizen's behalves. If the debtor files for bankruptcy after the state successfully prosecutes the "dead beat" debtor and the court sentences the debtor to make good on his child support obligations as a condition of probation, the powers of the bankruptcy court and those of the state court come into direct conflict. Does the "plenary power" exercised by the bankruptcy court over the debtor's estate extend so far as to prevent states from enforcing monetary obligations arising under state law against the debtor? Or should the state's sovereign interest in protecting its citizens against criminals allow it to modify or to override the bankruptcy court's protective powers? A recent en banc decision by the Ninth Circuit Court of Appeals, *In re Gruntz v. County of Los Angeles*,¹⁰ offered answers to these questions.

This Note seeks to examine the *Gruntz* decision in order to assess the soundness of its holding, and if necessary, to offer recommendations on the course the law should take. To this end, the Note will analyze *Gruntz* in light of its facts, the relevant statutory provisions, and the provisions of the Bankruptcy Code pertaining to the automatic stay, along with recent Supreme Court precedent, case law from other circuits, and the opinions of some scholars and practitioners. Because the Bankruptcy Code's language and congressional intent are both clear, and because the current approach taken by the Supreme Court favors

7. 11 U.S.C.A. § 362(b)(1) (West 2001).

8. See e.g. *In re Gruntz*, 202 F.3d 1074 (9th Cir. 2000) (en banc); *In re Rollins*, 200 B.R. 427 (N.D. Ga. 1996).

9. See e.g. *In re Rollins*, 200 B.R. 427 (N.D. Ga. 1996), *rev'd*, 243 B.R. 540 (N.D. Ga. 1997), *aff'd*, *Campbell v. Rollins*, 140 F.3d 1043 (11th Cir. 1998) (involving a father who owed child support payments).

10. 202 F.3d 1074 (9th Cir. 2000).

looking principally at these factors, the best reading of section 362¹¹ is that the automatic stay does not reach any criminal proceeding brought against a debtor, regardless of prosecutorial motive. Thus, courts who attempt to read too much into prosecutorial intent by searching for a debt collection motive, are probably not correctly interpreting the reach of the automatic stay.

With respect to which sovereign, state or federal, has jurisdiction to determine the applicability of the automatic stay, the most logical interpretation of jurisdictional statutes and case law suggests that state courts have concurrent jurisdiction with bankruptcy courts to make that determination. Where state courts mistakenly conclude the automatic stay does not apply, however, their determinations will not have preclusive effect in bankruptcy courts.

II. GRUNTZ—A SEA CHANGE IN NINTH CIRCUIT LAW

Until the *Gruntz* decision in February of 2000, the Ninth Circuit followed the rule articulated in *Hucke v. Oregon*¹² in delimiting the reach of the automatic stay in cases where a criminal defendant seeks the protection of the bankruptcy court to enjoin prosecution, sentencing, or probationary revocation in state court. *Gruntz* overturned the court's holding in *Hucke* that criminal prosecutions that have an underlying purpose of debt collection fall within the reach of the automatic stay.¹³ Before discussing the *Gruntz* decision, it is worthwhile to examine *Hucke* and how the Ninth Circuit reached its decision in that case.

A. Background: The Ninth Circuit's Holding in *Hucke* and How it Got There

In *Hucke*, the Ninth Circuit held that state criminal proceedings, which have debt collection as their primary objective, are not excepted from the automatic stay.¹⁴ The debtor in *Hucke* was sentenced to five years probation after he pled guilty to rape in state court.¹⁵ Per the terms of his probation, the court ordered the debtor to pay over \$21,000 in compensatory fines and restitution, at the rate of \$500 per month.¹⁶ Before he made any payments, the debtor filed a Chapter 13 bankruptcy

11. 11 U.S.C.A. § 362 (West 2001).

12. 992 F.2d 950 (9th Cir. 1993), *cert. denied*, 510 U.S. 862 (1993).

13. *Gruntz*, 202 F.3d at 1085-87. Although the court in *Hucke* reached the same result on the merits as the *Gruntz* court (that the criminal court action against the debtor was excepted from the reach of the automatic stay), it did so because it found that the state court judge's action, in revoking the debtor's probation, did not have debt collection as its aim. *Cf. Hucke*, 992 F.2d at 953.

14. *Hucke*, 992 F.2d at 953.

15. *Id.* at 951.

16. *Id.*

petition, listing the criminal fines as one of his debts.¹⁷ Under the terms of the debtor's Chapter 13 plan, he was to pay his creditors just over \$200 per month.¹⁸ Because the state claimed Huckle violated his probation terms, the state petitioned for revocation.¹⁹ When the debtor's attorney failed to convince the judge to allow the debtor to modify his Chapter 13 plan in order to pay the state most of what he owed, the judge revoked the debtor's probation and sentenced him to three years in prison.²⁰ After filing an amended plan calling for monthly payment of nearly one-hundred percent of the amount owed under the terms of his probation, the debtor filed an adversary proceeding alleging that the state probation revocation proceeding was void as violating the automatic stay.²¹

The bankruptcy court granted Huckle's motion for summary judgment, holding that the probation revocation proceeding was aimed at debt collection because it arose out of the debtor's failure to pay the fine.²² The district court affirmed and ordered the debtor released from prison.²³

In reviewing the lower courts' rulings, the Ninth Circuit first examined the various situations under which the automatic stay applied.²⁴ It then looked at the exception under section 362(b)(1) of the Bankruptcy Code for "the commencement or continuation of a criminal action or proceeding against a debtor."²⁵ Although the court recognized a "probation revocation proceeding, without more, would constitute a continuation of a criminal action against the [debtor]," it noted that "if the probation hearing had as its aim the collection of the fine, then it would run afoul of [section] 362(a)(6),²⁶ which stays acts intended to 'collect, assess or recover a claim' against the debtor."²⁷ The court noted, however, that where debt collection is not the aim of the state revocation

17. *Id.*

18. *Id.*

19. *Id.*

20. *Hucke*, 992 F.2d at 951.

21. *Id.*

22. *Id.* (citing *In re Hucke*, 127 B.R. 258, 262 (Bankr. D. Or. 1991), *habeas corpus*, 128 B.R. 675 (Bankr. D. Or. 1991), *vacated*, 992 F.2d 950 (9th Cir. 1993).

23. *Id.* (citing *Hucke*, 128 B.R. at 677).

24. *See id.* at 953 (discussing 11 U.S.C.A. § 362 (West 2001)).

25. *Id.* at 953 (quoting 11 U.S.C.A. § 362(b)(1) (West 2001)).

26. 11 U.S.C.A. § 362 (a)(6) (West 2001) states:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

Id.

27. *Hucke*, 992 F.2d at 953 (quoting 11 U.S.C.A. § 362(a)(6) (West 2001)).

proceeding, it would be exempt from the stay under section 362(b)(1).²⁸ Turning to the facts, the court found the state judge acted to revoke the debtor's probation because the judge felt the purposes of the probation were not being served, not because the debtor violated the conditions of his probation.²⁹ Therefore, the *Hucke* court reasoned the state judge did not intend the revocation as a means of forcing the debtor to comply with the terms of his probation.³⁰ Thus, the court held that the judge's decision did not have debt collection as its aim, and therefore, did not violate the automatic stay.³¹

The court next addressed the debtor's argument that the Supreme Court's holding in *Pennsylvania Department of Public Welfare v. Davenport*³² that simultaneously allowing criminal prosecutions while precluding restitution order enforcement proceedings during bankruptcy was not inconsistent with policy.³³ Pointing to key factual differences in the case, the court distinguished *Davenport*, ultimately concluding that the state court did not violate the automatic stay and was within its bounds to revoke the debtor's probation.³⁴

B. *Gruntz*: Jurisdictional Questions Answered and *Hucke* Overruled

In *Gruntz* the Ninth Circuit held that state court modifications of the automatic stay are not binding on federal courts, but the automatic stay does not act to enjoin criminal prosecutions brought by states.³⁵ The debtor in *Gruntz* was ordered to pay \$300 per month in child support, which he failed to do.³⁶ In the wake of his failure to make the

28. *Id.*

29. *Id.* at 953-54. The court noted that "Judge Haas stressed that *Hucke*'s rehabilitation could only be demonstrated by remorsefulness and a sense of responsibility, [and that he] believed that in attempting to avoid paying restitution by filing for Chapter 13 relief, *Hucke* demonstrated a callous disregard for the victim and a disrespect for the court and the judicial system." *Id.* at 954. The court also pointed to the fact that Judge Haas' judgment did not impose a monetary obligation on *Hucke* (the payment plan proposed by the debtor was rejected) as further evidence of the judge's intent. *Cf. Hucke*, 128 B.R. at 675-78 (choosing not to focus on Judge Haas' intent, the district court instead considered the reason the revocation proceeding was initiated (i.e. because the debtor failed to meet the terms of his probation)). The district court also noted the Supreme Court's holding in *Pennsylvania Department of Public Welfare v. Davenport* that the automatic stay "preclude[s] probation officials from enforcing restitution orders while a debtor seeks relief under Chapter 13" as justification for its holding that the state's action violated the automatic stay, thus finding the state court probation revocation judgment void. *Id.* at 679 (quoting *Pa. Dept. of Pub. Welfare v. Davenport*, 495 U.S. 552, 560-61 (1990)).

30. *Hucke*, 992 F.2d at 954.

31. *Id.*

32. 495 U.S. 552, 560-61 (1990).

33. *Hucke*, 992 F.2d at 954 (quoting *Davenport*, 495 U.S. at 560-61).

34. *Id.* The court pointed out that *Davenport* dealt with a state court that refused to obey a bankruptcy court order including the restitution obligation in the tally of a Chapter 13 debtor's debts, while the state court in *Hucke* did not attempt to collect the restitution debt from the debtor at all, once it decided to revoke the debtor's probation. *Id.*

35. *Gruntz*, 202 F.3d at 1077.

36. *Id.*

required payments, he filed for Chapter 13 bankruptcy protection.³⁷ Per the terms of his confirmed plan, Gruntz was required to pay a total of \$591 per month, including the required monthly amount and a portion of back payments owed.³⁸ Before any of the payments made to the trustee were disbursed, Gruntz' case was converted to a Chapter 11.³⁹ Gruntz' ex-wife then filed criminal charges with the Los Angeles County District Attorney; and as a result, he was convicted for failing to support his dependent children.⁴⁰ Gruntz tried to prevent the state from sentencing him by asking the bankruptcy court to issue an injunction against the State of California.⁴¹ The request was refused, and Gruntz was tried and convicted for two other related offenses.⁴² The present case arose when he filed an adversary complaint in the bankruptcy court asking that all the criminal proceedings brought against him by the State of California be declared void for violating the automatic stay.⁴³

The bankruptcy court ruled that the complaint was collaterally estopped by the state court judgments and dismissed it.⁴⁴ The district court affirmed the judgment on *Rooker-Feldman* doctrine grounds.⁴⁵ A three judge panel of the Ninth Circuit reversed, prompting the request for rehearing en banc.⁴⁶

The Ninth Circuit, in reversing the three judge panel in favor of the original ruling by the bankruptcy court, first examined the right of state courts to amend or modify the automatic stay.⁴⁷ After examining the principles of the *Rooker-Feldman* doctrine, the constitutional and statutory grants of jurisdictional authority applicable to federal courts, and federalism, the court concluded that construing the reach of the automatic stay in bankruptcy is solely within the jurisdiction of the federal courts.⁴⁸ Thus, it found state courts lack the power to amend or to modify the automatic stay.⁴⁹ The court then turned to whether the automatic stay applied to the state criminal prosecution against

37. *Id.* 11 U.S.C.A. §§ 1301-1330 (West 2001), permits a debtor with regular income to make regular payments on the debt, through the bankruptcy trustee as stated in the title of Chapter 13 "Adjustment of Debts of an Individual with Regular Income." *Id.*

38. *Gruntz*, 202 F.3d at 1077.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Gruntz*, 202 F.3d at 1077.

45. *Id.* at 1077-78.

46. *Id.* at 1078 (citing *In re Gruntz v. County of L.A.*, 177 F.3d 728 (9th Cir. 1999), *withdrawn*, 202 F.3d 1074 (2000)).

47. *Id.* at 1078.

48. *Id.* at 1084. See *infra* nn. 54-61 and accompanying text for discussion of the *Gruntz* court's consideration of the *Rooker-Feldman* doctrine and the constitutional and statutory authority of the courts.

49. *Id.*

Gruntz.⁵⁰ The court concluded that the plain language of section 362(b)(1) of the Bankruptcy Code made it clear that criminal prosecutions against the debtor were exempt from the protections of the automatic stay.⁵¹ In its holding, the Ninth Circuit expressly overruled the notion, proclaimed by the *Hucke* court, that section 362(a)(6) operates to trump the section 362(b)(1) exclusion if "a criminal proceeding has the collection of a debt as its underlying aim."⁵² The court also noted that its holding in *Gruntz* was in consonance with the positions taken by other circuits.⁵³

1. The Question of Jurisdiction over the Automatic Stay

In answering the jurisdictional question, the *Gruntz* court began by examining the various sources of jurisdictional authority. It first examined the applicability of the *Rooker-Feldman* doctrine.⁵⁴ The court noted that *Rooker-Feldman* is just one of several sources of jurisdictional law which could bear on the case.⁵⁵ The other two—habeas corpus law and bankruptcy law—allow federal district courts to act in ways *Rooker-Feldman* would not otherwise permit.⁵⁶ With regard to bankruptcy jurisdiction, the court listed several provisions of the Bankruptcy Code, which allow bankruptcy courts to avoid state court judgments,⁵⁷ and noted the established rule that "[a] state court judgment entered in a case that falls within the federal courts' exclusive jurisdiction is subject to collateral attack in the federal courts."⁵⁸ The court went on to note the exclusive role the Constitution vests in Congress in regulating bankruptcy,⁵⁹ and how Congress has used that power to vest jurisdiction over bankruptcy in the federal district courts.⁶⁰ The court then offered the bankruptcy jurisdictional statute as proof that power over bankruptcy matters is within the exclusive province of the federal

50. *Gruntz*, 202 F.3d at 1084.

51. *Id.* at 1085.

52. *Id.* (citing *Hucke*, 992 F.2d at 953). See *supra* n. 26 for the language of 11 U.S.C.A. § 362(a)(6) (West 2001).

53. *Id.* The court noted that other circuits had not followed the *Hucke* doctrine. *Id.*

54. *Id.* at 1087-88. The *Rooker-Feldman* doctrine derives its name from two Supreme Court cases: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *D.C. Ct. of App. v. Feldman*, 460 U.S. 462 (1983). In simple terms the doctrine stands for the proposition that the Supreme Court alone, among the federal courts, has the power to hear appeals from state court decisions. *Rooker*, 263 U.S. at 415-16. The other federal courts are also barred from entertaining claims that are "inextricably intertwined" with claims already decided by state courts. *Feldman*, 460 U.S. at 486-87.

55. *Id.* at 1079.

56. *Gruntz*, 202 F.3d at 1079.

57. *Id.* (listing sections of the Bankruptcy Code pertaining to avoidance, modification, and dischargeability).

58. *Id.* (quoting *In re Gonzales*, 830 F.2d 1033, 1036 (9th Cir. 1987)).

59. *Id.* at 1080 (citing U.S. Const., art. I, § 8).

60. *Id.*

district courts.⁶¹

Next, the court discussed the role of bankruptcy courts. The court first revealed the process by which federal district courts automatically refer all Bankruptcy Code cases and proceedings to the bankruptcy courts.⁶² The court then explained the distinction between core and non-core proceedings,⁶³ and Congress' declaration that actions to "terminate, annul or modify" the automatic stay are core proceedings.⁶⁴ The purpose of the automatic stay, according to the court, is to give "the bankruptcy court an opportunity to harmonize the interests of both debtor and creditors while preserving the debtor's assets for repayment and reorganization of his or her obligations."⁶⁵ The court then described the nature of automatic stay as being a type of injunction, noting in particular the reach of the automatic stay under section 362(a)(6).⁶⁶ According to the court, the powers the bankruptcy court exercises under the automatic stay are not subject to state court modification,⁶⁷ and further, "actions in violation of the automatic stay are void."⁶⁸ In addition, the court noted, "[a] congressional grant of exclusive jurisdiction to the federal courts includes the implied power to protect that grant."⁶⁹ The court further recognized that because "federal courts have the final authority to determine the scope and applicability of the automatic stay,"⁷⁰ state courts do not have the authority to "violate the supreme law of the land."⁷¹ Thus, the court reasoned, *Rooker-Feldman* does not apply to bankruptcy because a bankruptcy court enforcing the automatic stay does not "conduct an improper review of a state court."⁷²

Ultimately, the *Gruntz* court concluded that states cannot modify or amend the automatic stay and that *Rooker-Feldman* does not deny federal courts the right to enforce the automatic stay, or to hear appeals like the case at issue.⁷³

61. *Id.* at 1080 (citing 28 U.S.C.A. § 1334(a) (West 2001)), which states that "[d]istrict courts have original and exclusive jurisdiction of all cases under Title 11".

62. *Gruntz*, 202 F.3d at 1080 (citing 28 U.S.C.A. § 157(a) (West 2001)). Section 157(a) gives district courts the discretion to refer cases arising under Title 11 to the bankruptcy courts. *Id.* at 1080 n. 4. The court also notes that it is uniform practice for the district courts to automatically refer cases to the bankruptcy courts by way of local rules. *Id.*

63. *Id.* at 1081 (citing 28 U.S.C.A. § 157 (West 2001)).

64. *Id.* (quoting 28 U.S.C.A. § 157(b)(2)(G) (West 2001)).

65. *Id.* (quoting *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

66. *Id.* at 1081-82 (citing 11 U.S.C.A. § 362(a)(6) (West 2001)).

67. *Id.* at 1082 (citing *Donovan v. City of Dallas*, 377 U.S. 408, 412-13 (1964) in support of the proposition that state courts are powerless to restrain federal *in rem* proceedings under the Bankruptcy Code).

68. *Gruntz*, 202 B.R. at 1082 (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)).

69. *Id.* at 1083 (quoting *Gonzales*, 830 F.2d at 1036).

70. *Id.*

71. *Id.* (quoting *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940)).

72. *Id.*

73. *Id.* at 1084.

2. The Applicability of the Automatic Stay to the Commencement or Continuation of Criminal Proceedings in State Court

After reaching its conclusion on the first issue, the *Gruntz* court took up the issue of whether the automatic stay applies to criminal court proceedings brought against the debtor in state court.⁷⁴ After stating the general policy set forth by the Supreme Court in *Kelly v. Robinson*⁷⁵ that "federal bankruptcy courts should not invalidate the results of state criminal proceedings,"⁷⁶ the court examined the language of section 362(b)(1).⁷⁷

Section 362(b)(1), the court noted, provides that "[t]he filing of a petition under section 301, 302, or 303 of this title . . . does not operate as a stay—(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor."⁷⁸ Although the court recognized that the plain language of the statute suggests the automatic stay would not operate to enjoin the criminal proceedings brought against Gruntz,⁷⁹ the court noted that its holding in *Hucke* may require it to examine the motives of the state in prosecuting the debtor.⁸⁰ Noting the difficulty of divining the motives for prosecution, the fact that the *Hucke* holding is no longer consistent with other circuits' positions on the issue⁸¹ and the absence, in section 362(b)(1), of any language "provid[ing] any exception for prosecutorial purpose or bad faith[.]" the court concluded that section 362(b)(1) should be "enforced according to its terms."⁸²

In further support of its position, the court listed factors that

74. *Gruntz*, 202 F.3d at 1084.

75. 479 U.S. 36 (1986).

76. *Gruntz*, 202 F.3d at 1084 (quoting *Kelly*, 479 U.S. at 47). In *Kelly*, the Supreme Court overturned a decision by the Second Circuit that held criminal restitution obligations qualified under the definition of debt and thus were subject to discharge in Chapter 7 proceedings. *Kelly*, 479 U.S. at 36. Even though the Court did not specifically address criminal proceedings with regard to the automatic stay, the decision does indicate the Court's preference for a reading of the Bankruptcy Code that gives states wide latitude in defining and adjudicating criminal matters. See *id.* (emphasizing that bankruptcy courts should not "invalidate the results of state criminal proceedings"). The Second Circuit's holding in *Kelly* has been widely criticized. See e.g. Siobhan E. Moran, Student Author, *The Second Circuit's Novel Approach to Defining Debt Under the Bankruptcy Code: In Re Robinson*, 60 St. John's L. Rev. 344 (1986); Seamus C. Duffy, Student Author, *Bankruptcy: Dischargeability of Restitutive Conditions of Probation—Criminals Find Refuge in the Provisions of the Bankruptcy Reform Act of 1978*, 31 Vill. L. Rev. 591 (1986).

77. *Gruntz*, 202 F.3d at 1085.

78. *Id.* (quoting 11 U.S.C.A. § 362(b)(1) (West 2001)).

79. See *id.* at 1084-85 (discussing the plain language of the statute which clearly states that the Code does not stay a criminal proceeding against a debtor).

80. See *id.* (citing *Hucke*, 992 F.2d at 953 which requires courts to look at the "underlying aim" of the proceeding).

81. *Id.* at 1085.

82. *Id.* (citing *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989)). *Ron Pair Enterprises* is one case in a long line of decisions by the Rhenquist Court that says courts should interpret provisions of the Bankruptcy Code according to their "plain meaning." *Ron Pair*, 489 U.S. 242. For a fuller discussion, see *infra* n. 92.

suggest the bankruptcy court's power over the debtor's estate does not extend to state criminal proceedings. First, the court offered that "[t]he purpose of bankruptcy is to protect those in financial, not moral, difficulty."⁸³ The court pointed to the fact that "actions brought pursuant to a government's police power" are not subject to removal to bankruptcy courts as evidence of this.⁸⁴ Next, the court noted that "Congress has specifically subordinated the goals of economic rehabilitation and equitable distribution of assets to the states' interest in prosecuting criminals."⁸⁵ The court went on to add that it is up to the judgment of the state to determine what is and is not criminal, and that prosecutions are brought on behalf of all citizens.⁸⁶ The court added further that trying a criminal case is up to the discretion of the prosecutor, which is "ill-suited to judicial review."⁸⁷

The court concluded by holding that the automatic stay did not reach California's prosecutions of Gruntz.⁸⁸ It also noted that Gruntz had other remedies to pursue like habeas corpus,⁸⁹ or an injunction under section 105 of the Bankruptcy Code.⁹⁰

III. ANALYSIS: IS GRUNTZ THE RIGHT ANSWER?

As the Ninth Circuit indicated, the *Gruntz* decision is consistent with the approach other circuits have taken with respect to construing the reach of the automatic stay.⁹¹ The remainder of this Note will briefly survey the prevailing trends in the Supreme Court and the other circuits, and discuss some troubling aspects of the jurisdictional portion of the opinion. In the final tally, this analysis will show that *Gruntz* does propound a solid solution that is true to both law and policy on the issue of whether certain state actions against a debtor violate the automatic stay. With respect to whether only bankruptcy courts can determine the applicability of the automatic stay, however, *Gruntz* is problematic.

A. "No Means No:" An Overview of Recent Holdings by the Supreme Court and the Circuits

Although the Supreme Court has never directly answered whether the automatic stay operates to enjoin criminal proceedings brought for the main purpose of debt collection, *Gruntz* appears to be consistent

83. *Gruntz*, 202 F.3d at 1085. (quoting *Barnette v. Evans*, 673 F.2d 1250, 1251 (11th Cir. 1982)).

84. *Id.* (citing 28 U.S.C.A. § 1452 (West 2001)).

85. *Id.* at 1086.

86. *Id.*

87. *Id.* (quoting *Wayte v. U.S.*, 470 U.S. 598, 607 (1985)).

88. *Id.* at 1088.

89. *Gruntz*, 202 F.3d at 1086 (citing 28 U.S.C.A. §§ 2241-2242 (West 2001)).

90. *Id.* at 1087 (citing 11 U.S.C.A. § 105 (West 2001)).

91. *Id.* at 1085.

with recent Supreme Court precedent in two ways. First, the *Gruntz* holding fits neatly within the "plain meaning" approach taken by the Rhenquist Court in resolving other questions pertaining to provisions of the Bankruptcy Code.⁹² Second, the Court has indicated its preference in *Kelly*, that "bankruptcy courts should not invalidate the results of state criminal proceedings."⁹³ Yet, some courts have used the Supreme Court's holding in *Davenport* for the proposition that criminal proceedings, whose underlying purpose is debt collection, are subject to the automatic stay.⁹⁴ Because these two opinions⁹⁵ appear inconsistent, and for other reasons addressed herein, it is possible to read the Supreme Court as supporting the notion that prosecutions might fall within the automatic stay. However, a closer look reveals that these inconsistencies are merely cosmetic. In reality, the Court has continued to follow its "plain meaning" standard.⁹⁶

In *Kelly*, the Supreme Court considered whether criminal restitution obligations were debts dischargeable in Chapter 7 bankruptcy.⁹⁷ The debtor in *Kelly* was ordered to make restitution after her conviction for fraudulently receiving welfare benefits.⁹⁸ Shortly thereafter, she filed for Chapter 7 bankruptcy protection, in which she listed the restitution obligation as a claim.⁹⁹ All her debts were eventually discharged; nevertheless, the state attempted enforcing the restitutionary obligation.¹⁰⁰ The debtor objected, arguing the restitutionary obligations were debts that had been discharged.¹⁰¹ The bankruptcy court found the restitution payments were non-

92. See Walter A. Effross, *Grammarians at the Gate: The Rhenquist Court's Evolving "Plain Meaning" Approach to Bankruptcy Jurisprudence*, 23 Seton Hall L. Rev. 1636 (1993). In his article, Mr. Effross reviewed several of the seminal bankruptcy decisions handed down by the Rhenquist Court concluding that the Court will interpret Bankruptcy Code provisions by their plain meanings "[s]o long as the plain meaning is coherent and consistent with the remainder of the Code and with other statutes, the section's legislative history will generally be deemed irrelevant." *Id.* at 1638-39. He added, however, that where this meaning is ambiguous the Court will consider the Code provision's legislative history. *Id.* at 1039.

93. *Kelly*, 479 U.S. at 47.

94. *Hucke*, 128 B.R. at 679. The district court quoted language in *Davenport* that the automatic stay "preclude[s] probation officials from enforcing restitution orders while a debtor seeks relief under Chapter 13" in support of its holding that the state, in revoking the debtor's probation for failing to make restitutionary payments, violated the automatic stay. *Id.* (quoting *Davenport*, 495 U.S. at 561).

95. It is worth noting that both *Kelly* and *Davenport* addressed the dischargeability of criminal restitutionary obligations; however, neither decision addressed any automatic stay issues. See *Kelly*, 479 U.S. at 39; *Davenport*, 495 U.S. at 553 (discussing dischargeability of criminal restitutionary obligations).

96. See *supra* n. 92 and accompanying text.

97. *Kelly*, 479 U.S. at 38.

98. *Id.* at 38.

99. *Id.* at 39.

100. *Id.* at 39-40.

101. *Id.* at 40.

dischargeable debts,¹⁰² but the Second Circuit reversed, holding that the restitution payments were discharged.¹⁰³

The Supreme Court reversed,¹⁰⁴ holding that section 523(a)(7)¹⁰⁵ "preserves from discharge any condition a state criminal court imposes as part of a criminal sentence," but the Court avoided determining whether those obligations were debts.¹⁰⁶ Even though *Kelly* considered only issues regarding dischargeability of debts, the decision has been used to support the proposition that criminal proceedings, no matter what their underlying aim, are exempt from the reach of the automatic stay.¹⁰⁷

In the *Davenport* case, the Supreme Court again considered whether restitutionary obligations were dischargeable, but in the context of a Chapter 13 bankruptcy.¹⁰⁸ Like the debtor in *Kelly*, the *Davenport* debtors were convicted of welfare fraud, and were ordered to make restitution in lieu of going to prison.¹⁰⁹ The debtors subsequently filed for bankruptcy under Chapter 13.¹¹⁰ The county probation department responded by initiating revocation proceedings, which the debtors attempted to block with an adversary proceeding.¹¹¹ The debtors' probation was not revoked, but the state court ordered the restitutionary obligation to remain in effect.¹¹² The bankruptcy court held that the restitution was dischargeable.¹¹³ The district court reversed, and the Third Circuit reversed the district court.¹¹⁴

In affirming the Third Circuit, the *Davenport* Court did what the *Kelly* Court did not by holding that restitutionary obligations are debts, which are dischargeable under Chapter 13.¹¹⁵ The Court recognized it reached the opposite result in *Kelly*, but noted that in drafting Chapter 13, "Congress secured a broader discharge for debtors under Chapter 13 than Chapter 7 by extending to Chapter 13 proceedings some, but not all, of [section] 523(a)'s exceptions to discharge."¹¹⁶ The court also

102. *Id.* at 41.

103. *Kelly*, 479 U.S. at 42.

104. *Id.* at 43.

105. 11 U.S.C.A. § 523(a)(7) (West 2001). Section 523(a)(7) excepts from discharge any debt which is "a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss." *Id.*

106. *Kelly*, 479 U.S. at 50.

107. *Gruntz*, 202 F.3d at 1084; *U.S. v. Caddell*, 830 F.2d 36, 39 (5th Cir. 1987).

108. *Davenport*, 495 U.S. at 555.

109. *Id.* at 556.

110. *Id.*

111. *Id.* at 557.

112. *Id.* at 555.

113. *Id.*

114. *Davenport*, 495 U.S. at 557.

115. *Id.* at 555.

116. *Id.* at 563 (citing Lawrence King, *Collier on Bankruptcy* vol. 5, ¶ 1328.01[1][c] (15th ed., Matthew Bender 1986)).

addressed the United State's amicus argument that allowing criminal restitution obligations to be discharged was inconsistent with section 362(b)(1)'s exception to the automatic stay for "commencement or continuation of a criminal action or proceeding against the debtor."¹¹⁷ The Court responded, saying "[i]t is not an irrational or inconsistent policy choice to permit prosecution of criminal offenses during the pendency of a bankruptcy action and at the same time to preclude probation officials from enforcing restitution orders while a debtor seeks relief under Chapter 13."¹¹⁸

Congress responded to the *Davenport* decision by amending the Bankruptcy Code.¹¹⁹ Now the Chapter 13 of the Code includes a new discharge exception for "any debt . . . for restitution included in a sentence on the debtor's conviction of a crime."¹²⁰ It is clear that Congress has shut the door on dischargeability of criminal *restitutionary obligations*; nevertheless, one circuit has held that criminal *fines* are dischargeable in Chapter 13 bankruptcy.¹²¹

A key aspect of the *Gruntz* court's holding, that the automatic stay did not prevent a debtor's criminal prosecution in state court, was the court's reliance on the Supreme Court's pronouncement in *Kelly* that the Bankruptcy Code should be interpreted to "reflect . . . a deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings . . . [which entail] the [sovereign] right to formulate and enforce penal sanctions"¹²² Yet, relying on this opinion alone to support the general proposition that bankruptcy courts are completely without power to invalidate the results of a criminal proceeding may be a bit of a reach. A fairly recent article by Professor Zaretsky of the Brooklyn Law School suggests why that might be so.¹²³ In his article, Professor Zaretsky compares *Kelly* and *Davenport* with the Sixth Circuit's holding in *Hardenberg v. Virginia*¹²⁴ that a criminal fine imposed against a debtor by a state criminal court may be discharged in a Chapter 13 bankruptcy.¹²⁵

Professor Zaretsky initially notes that "the intersection between bankruptcy and criminal law generally revolves around noninterference with criminal proceedings and with the enforcement of criminal fines, penalties and restitutionary orders that require the payment of

117. *Id.* at 560 (quoting 11 U.S.C.A. §362(b)(1) (West 2001)).

118. *Id.* at 660-61.

119. See 11 U.S.C.A. § 1328(a)(3) (West 2001) (Code currently provides a discharge exception for a criminal fine or restitution).

120. *Id.*

121. See *In re Hardenberg*, 42 F.3d 986 (6th Cir. 1994).

122. *Kelly*, 479 U.S. at 47.

123. Barry L. Zaretsky, *Criminal Fines and Discharge of Debts*, 213 N.Y. L.J. 3 (col. 1) (Jan. 19, 1995).

124. 42 F.3d 986 (6th Cir. 1994).

125. Zaretsky, *supra* n. 123, at 3.

money.”¹²⁶ According to Professor Zaretsky, however, that philosophy is not always uniformly honored.¹²⁷ He notes the opposite results in *Kelly* and *Davenport*, but recognizes the post-*Davenport* amendment to Chapter 13 excepting restitution obligations from discharge.¹²⁸

In his review of *Hardenberg*, Zaretsky discusses these seemingly inconsistent interpretations of the Bankruptcy Code’s dischargeability provisions.¹²⁹ *Hardenberg* involved a debtor who was convicted and fined for driving under the influence (DUI).¹³⁰ After his conviction, the debtor filed for Chapter 13 protection, listing the State as an unsecured creditor.¹³¹ According to the terms of the Chapter 13 plan, the State of Virginia was to receive twenty percent payment on its unsecured claim.¹³² The debtor then applied to Virginia for a letter of reinstatement.¹³³ When the state refused to reinstate the debtor’s driving privileges, the debtor brought an adversary proceeding against the state.¹³⁴ The bankruptcy court held that, although the automatic stay did not apply to Virginia’s refusal to issue a reinstatement letter, the fines were dischargeable debts.¹³⁵ The district court affirmed.¹³⁶

In affirming the district and bankruptcy courts, the Sixth Circuit held that since the revised language of Chapter 13 pertaining to dischargeability of debts excludes only debts for restitution resulting from a debtor’s criminal conviction it reasoned that Congress must have intended for criminal fines to be dischargeable as debts.¹³⁷ The court reached this conclusion primarily because of its belief that “[w]here . . . congressional intent is clear, [a court’s] sole function is to enforce [a] statute according to its terms.”¹³⁸ In Zaretsky’s opinion, *Hardenberg*, “[a]s a matter of statutory interpretation, and as an application of available precedent . . . clearly reaches the right result.”¹³⁹ He notes that

as a matter of policy, it would not be unreasonable for the legislature to have decided that if a debtor makes a good faith attempt to repay his . . . debts under a Chapter 13 plan, the debtor can be discharged from some criminal obligations. . . . In this regard, it also would not be unreasonable to distinguish between those obligations the payment of which ultimately

126. *Id.*

127. *See id.* (discussing various results in recent cases involving criminal proceedings).

128. *See id.*

129. *Id.*

130. *Hardenberg*, 42 F.3d at 987.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* at 987-88.

135. *Id.* at 988.

136. *Hardenberg*, 42 F.3d at 988.

137. *Id.* at 993-94 (citing 11 U.S.C.A. § 1328(a) (West 2001)).

138. *Id.* (quoting *Davenport*, 495 U.S. at 564).

139. Zaretsky, *supra* n. 123, at 3.

benefit the victim (restitution) and those that flow only into the State's general coffers (fines).¹⁴⁰

Zaretsky acknowledges that Congress may have unintentionally omitted criminal fines from its post-*Davenport* amendment to the Bankruptcy Code, but notes that the question remains open.¹⁴¹ He concludes by suggesting Congress can fix any seeming inconsistencies in the Bankruptcy Code by amending it, and notes that "[i]n light of the broad definition of 'debt' and 'claim,' the Supreme Court's holdings in *Kelly* and *Davenport*, the express exception to discharge limited to restitution obligations in Chapter 13 and some justification for a distinction between restitution and fines, it seems clear that non-restitution criminal penalties must be 'debts' under the Bankruptcy Code that are dischargeable in Chapter 13."¹⁴²

Although *Kelly*, *Davenport*, and *Hardenberg* appear outwardly inconsistent,¹⁴³ it is clear this is because each case relied on a different section, or version of a section, of the Bankruptcy Code. Thus, the holding in each case differed only because each of the courts construed each statutory section according to its plain meaning. In the end, what appears to be a chink in the iron-clad rule that bankruptcy courts should not interfere with state criminal court judgments is really nothing more than a mirage. While neither the Supreme Court nor the Sixth Circuit directly addressed the issue raised in *Gruntz*, other circuits have consistently held that criminal proceedings, regardless of their underlying purpose, are excepted from the automatic stay.¹⁴⁴

The case most factually similar to *Gruntz* is *In re Rollins*.¹⁴⁵ Like the debtor in *Gruntz*, the debtor in *Rollins* owed monthly child support payments that arose out of a divorce decree.¹⁴⁶ Also, like the *Gruntz* case, when the *Rollins* debtor failed to make the required payments, he was tried for child abandonment and convicted.¹⁴⁷ The state court in *Rollins* conditionally suspended the debtor's sentence and ordered him to pay a fine and to meet the support terms of the divorce decree.¹⁴⁸ Unlike *Gruntz*, however, the debtor in *Rollins* did not file for Chapter 13 bankruptcy protection until after the revocation proceedings were initiated.¹⁴⁹ Per the terms of his confirmed plan, the debtor in *Rollins*

140. *Id.*

141. *See id.* (reasoning that Congress may have included only restitution simply because it was the only issue it was responding to after *Davenport*).

142. *Id.*

143. *See supra* nn. 115, 116, 135 and accompanying text.

144. *See e.g. Campbell*, 140 F.3d 1043; *infra* nn. 163-66 and accompanying text.

145. 243 B.R. 540 (N.D. Ga. 1997).

146. *Id.* at 542.

147. *Id.* at 542-43.

148. *Id.* at 543.

149. *Id.* at 543-44.

agreed to pay all the back child-support payments he owed.¹⁵⁰ When the judge became aware of the debtor's bankruptcy petition, she postponed action on the revocation request until the county could research whether her court could proceed. The county ignored the judge and initiated a second revocation request. The debtor responded by filing an adversary proceeding alleging the county violated the automatic stay. It is significant to note that the court never acted on the revocation request. In contrast, the state court in *Gruntz* proceeded with sentencing despite the debtor's adversary complaint.¹⁵¹

In the adversary proceeding, the principle issue the bankruptcy court considered was whether the county's attempts to revoke the debtor's suspended sentence violated the automatic stay.¹⁵² The bankruptcy court said that it did violate the stay¹⁵³ holding that where a state's child support and abandonment law has the welfare of the child as its main aim, rather than punishment and deterrence, the state's action revoking a debtor's suspended sentence after his subsequent failure to meet the terms of the sentence for non-support resembles a remedial measure in the nature of civil contempt.¹⁵⁴ Thus, it falls outside the automatic stay exemption under section 362(b)(1) for the commencement or continuation of criminal proceedings against the debtor.¹⁵⁵

The district court, reversing the bankruptcy court's decision, first examined the situations in which the automatic stay does apply.¹⁵⁶ It then noted the exception under section 362(b)(1) for "the commencement or continuation of a criminal action or proceeding against the debtor."¹⁵⁷ Next, the court examined what the language in section 362(b)(1) meant, noting that in interpreting provisions of the Bankruptcy Code "courts must first look to the plain meaning of the words used, and then determine whether applying the plain meaning is demonstrably at odds with Congress' intent."¹⁵⁸ Looking at the words themselves, the court found that actions to revoke a debtor's probation did constitute "the continuation of criminal actions" within the meaning of the statute.¹⁵⁹ Turning next to the Bankruptcy Code's legislative history, the court found that it was consistent with the plain meaning of the section

150. *Id.* at 542.

151. *See supra* nn. 43, 52 and accompanying text.

152. *Rollins*, 200 B.R. at 429 (Bankr. N.D. Ga. 1996).

153. *Id.* at 443.

154. *Id.* at 448.

155. *Id.*

156. *Id.* at 546.

157. *Id.* at 547 (quoting 11 U.S.C.A. § 362(b)(1) (West 2001)).

158. *Rollins*, 200 B.R. at 547 (citing *Jove Engr., Inc. v. IRS*, 92 F.3d 1539, 1550 (11th Cir. 1996)).

159. *Id.* at 547.

362(b)(1)¹⁶⁰ noting that the "bankruptcy laws are not a haven for criminal offenders . . . [and that] criminal actions and proceedings may proceed in spite of bankruptcy."¹⁶¹ Thus, the court held the county's actions to have the debtor's probation revoked were excepted from the reach of the automatic stay.¹⁶²

Although the court recognized that some courts do consider the state's motivation in bringing or continuing a criminal action,¹⁶³ it noted that most courts "have found such an inquiry inappropriate."¹⁶⁴ While the court acknowledged that using criminal process to collect civil debts "may frustrate the purpose of the automatic stay."¹⁶⁵ It advised that bankruptcy courts could use their section 105 powers to enjoin those types of actions because "the section 362(b)(1) exception . . . merely reflects Congressional judgment that debtors should move bankruptcy courts to action to determine on a case-by-case basis whether a particular action interferes with the debtor's financial rehabilitation or the orderly liquidation of his estate."¹⁶⁶

In a somewhat older case, *In re Sylvestre*,¹⁶⁷ the Fourth Circuit examined the issue of whether a store's action in swearing out a criminal complaint against a debtor for bad checks constituted a violation of the automatic stay.¹⁶⁸ The debtor in *Sylvestre* owed a grocery store money for passing bad checks at the time she filed for Chapter 7 bankruptcy protection.¹⁶⁹ The debtor informed the store of her bankruptcy status only after they had pressed charges against her.¹⁷⁰ After she was convicted for larceny, she appealed, and the matter was eventually dismissed.¹⁷¹ The debtor then filed contempt charges against the store for violating the automatic stay.¹⁷² The store moved for summary judgment which the bankruptcy court granted.¹⁷³ The district court affirmed, and the debtor appealed.¹⁷⁴

In affirming the district court, the Fourth Circuit held the store's actions in bringing criminal charges did not violate the automatic stay.¹⁷⁵

160. *Id.*

161. *Id.* at 546-47 (quoting H.R. Rpt. 95-595, at § 362 (Sept. 8, 1977); S. Rpt. 95-598, at § 361 (July 14, 1978) (reprinted in 1978 U.S.C.A.N. 5837, 6299)).

162. *Id.* at 547-48.

163. *Id.* at 548.

164. *Rollins*, 200 B.R. at 548.

165. *Id.* (quoting *Howard v. Allard*, 122 B.R. 696, 699 (Bankr. W.D. Ky. 1991)).

166. *Id.*

167. 963 F.2d 368 (4th Cir. 1992) (per curiam).

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Sylvestre*, 963 F.2d at 368.

174. *Id.*

175. *Id.*

According to the court, the situation fell into a exception under the unambiguous language of section 362(b)(1).¹⁷⁶ The court noted that "[n]early every court that has examined the scope of § 362(b) has concluded that 'criminal action' includes all criminal actions."¹⁷⁷ The court cited a Kentucky case which held that criminal proceedings whose purpose is debt collection were within the automatic stay's reach, but disagreed with that court's reasoning in part because section 105's injunctive powers provide a remedy for those situations.¹⁷⁸ *Sylvestre*, like *Rollins* is consistent with *Gruntz*.¹⁷⁹

The Fifth Circuit's position on the applicability of the automatic stay to criminal debt collection-type actions is also consistent with *Gruntz*.¹⁸⁰ In *United States v. Caddell*,¹⁸¹ the Fifth Circuit examined section 362(b)(1) in the context of a federal criminal probation revocation action.¹⁸² The debtor in *Caddell* sold cattle that were mortgaged to the Farmer's Home Administration (FHA) without the FHA's permission and was subsequently convicted of fraudulent conversion.¹⁸³ Prior to sentencing, the debtor filed for Chapter 11 bankruptcy.¹⁸⁴ He was then sentenced to probation on condition he make restitution to the FHA.¹⁸⁵ When the debtor failed to meet his restitutionary obligations, his probation officer initiated probation revocation proceedings, which earned the debtor a prison sentence.¹⁸⁶ The debtor appealed the district court's revocation order on the grounds that it violated the automatic stay.¹⁸⁷

The Fifth Circuit held that the automatic stay does not bar "the commencement or continuation of criminal proceedings" even where restitution is involved as a condition of probation.¹⁸⁸ The court also held that the Supreme Court's holding in *Kelly* applied equally to criminal actions brought against a debtor in either federal or state court.¹⁸⁹

While the Ninth,¹⁹⁰ Eleventh,¹⁹¹ Fourth,¹⁹² and Fifth Circuits¹⁹³ all

176. *Id.*

177. *Id.*

178. *Id.* (discussing *In re Padgett*, 37 B.R. 280, 284-85 (Bankr. W.D. Ky. 1983)).

179. See *supra* nn. 88, 175 and accompanying text.

180. See *infra* n. 188 and accompanying text.

181. 830 F.2d 36 (1987).

182. *Id.* at 37.

183. *Id.* at 37-38.

184. *Id.* at 39.

185. *Id.* at 38.

186. *Id.*

187. *Caddell*, 830 F.2d at 38.

188. *Id.* at 39 (citing *Kelly*, 479 U.S. 36 (1986)).

189. *Id.*

190. See *Gruntz*, 202 F.3d at 1085 (holding the stay applies to criminal proceedings with the intent to collect a debt).

191. For a recent decision by a court within the Eleventh Circuit, see *Bryan v. Rainwater*, 254 B.R. 273 (Bankr. N.D. Ala. 2000) (state court probation revocation action against a Chapter 13 debtor who failed to make restitution payments after her conviction for

appear to be in agreement, many jurisdictions still employ the approach favored by the *Hucke* court.¹⁹⁴ Considering the Supreme Court's preferred plain meaning approach and the prevailing trend towards a literal interpretation of section 362(b)(1), it is unlikely these holdings will survive if appealed. The *Gruntz* opinion is reasonable with respect to this portion of its holding, but there may be some problems with the court's jurisdictional holding.

B. Potential Problems with the Jurisdictional Arm of *Gruntz*

Although *Gruntz* appears well reasoned, there are aspects of the opinion that deserve a closer look, particularly the court's holding on jurisdiction to determine the applicability of the automatic stay. An examination of *Gruntz*'s jurisdictional arm exposes three possible interpretations of the court's holding: 1) the court simply ignored existing precedent by barring state courts from making the applicability determination, 2) the court rendered an ambiguous and legally untenable holding¹⁹⁵ or 3) the court fully considered existing precedent, but carefully delimited the scope of state court jurisdiction. The interplay between key jurisdictional statutes, the strong current of case law, and the language of the opinion itself, favor a reading of *Gruntz* that is consistent with the third interpretation. Furthermore, the third interpretation accords with common sense.

1. Statutory Sources of Jurisdiction Over the Stay's Reach and a Survey of Recent Cases

Section 1334(a) of the Judiciary Act gives district courts "original and exclusive jurisdiction of all cases under title 11" subject to certain restrictions.¹⁹⁶ However, section 157 provides a mechanism whereby district courts may refer bankruptcy cases and related proceedings to bankruptcy judges.¹⁹⁷ Section 157(b)(1) gives bankruptcy courts

embezzling money from her employer; did not violate the automatic stay).

192. See *supra* nn. 167-79 and accompanying text.

193. *Caddell*, 830 F.2d at 38.

194. See e.g. *supra* n. 178 (discussing *Padgett*, 37 B.R. at 283-84); *In re Brown*, 213 B.R. 317, 320-21 (Bankr. W.D. Ky. 1997).

195. This is the position stated in *In re Lenke*, 249 B.R. 1 (Bankr. D. Ariz. 2000). See *infra* Section III.B.2. for further discussion.

196. 28 U.S.C.A. § 1334(a) (West 2001). Section 1334(b), however, states: "Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under Title 11 or arising in or related to cases under title 11."

197. See 28 U.S.C.A. § 157(a) (West 2001) (stating specifically, that: "Each district court may provide that any or all cases under Title 11 and any or all proceedings arising under title 11 or arising in or related to a case under Title 11 shall be referred to the bankruptcy judges for the district."). As noted in *Gruntz*, district courts automatically refer all bankruptcy matters to bankruptcy courts. See *supra* n. 62.

authority to "hear and determine all cases . . . and . . . core proceedings arising under title 11, or arising in a case under title 11."¹⁹⁸ Subsection (b)(2) gives some examples of core proceedings including "motions to terminate, annul, or modify the automatic stay."¹⁹⁹

A significant number of circuits and lower courts have recognized that determining the applicability of the automatic stay is not a core matter, and that, in addition to bankruptcy courts, other courts have jurisdiction to make this determination.²⁰⁰ The majority of these courts follow the Second Circuit's declaration in *In re Baldwin-United Corporation Litigation*,²⁰¹ that "[t]he court in which the litigation claimed to be stayed is pending has jurisdiction to determine . . . whether the proceeding pending before it is subject to the automatic stay."²⁰²

Baldwin involved an insurance company embroiled in multi-district litigation over Single Premium Deferred Annuities ("SPDAs") it issued.²⁰³ Due to uncertainties about the insurance company's ability to pay the returns on the SPDAs, it was forced into Chapter 11 reorganization proceedings in Ohio.²⁰⁴ Shortly after filing for Chapter 11, one of the insurance company's customers filed a third party complaint in the District Court for the Southern District of New York seeking indemnity and contribution for the customer's liability in the multi-district litigation.²⁰⁵ Believing the third party complaint violated the automatic stay, the insurance company sought to have the Ohio bankruptcy court determine the applicability of the stay.²⁰⁶ Before it was able to act, however, the customer prevailed on the district court in New York to determine the reach of the stay, and to enjoin the insurance company from asking the bankruptcy court to determine if the stay applied.²⁰⁷

After reviewing the facts, the *Baldwin* court concluded that although the district court had jurisdiction to determine the automatic stay's reach, it misused its equitable power when it issued the injunction

198. 28 U.S.C.A. § 157(b)(1) (West 2001).

199. 28 U.S.C.A. § 157(b)(2)(G) (West 2001).

200. See e.g. *In re Baldwin-United Corp. Litig.*, 765 F.2d 343, 347 (2d Cir. 1985) (holding that court hearing litigation where stay is pending has jurisdiction).

201. *Id.*; see *Brock v. Morysville Body Works, Inc.*, 829 F.2d 383, 387 (3d Cir. 1987) (quoting *Baldwin-United Corp. Litig.*, 765 F.2d at 347 and holding that circuit courts have concurrent jurisdiction to determine the applicability of the automatic stay). Cf. *NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934 (6th Cir. 1986) (quoting *Baldwin-United Corp. Litig.*, 765 F.2d at 347 and holding that the Sixth Circuit had jurisdiction to determine whether the automatic stay reached an unfair labor practices proceeding).

202. *Baldwin-United Corp. Litig.*, 765 F.2d at 347. Although the court's holding applied to whether a U.S. district court had authority to determine the stay's applicability, it has been used to support the proposition that state courts also have concurrent jurisdiction over determining the applicability of the automatic stay. *Id.*

203. *Id.* at 345.

204. *Id.*

205. *Id.*

206. *Id.* at 346.

207. *Id.*

preventing the insurance company from asking the bankruptcy court to determine the applicability of the stay.²⁰⁸ The court gave two reasons why the injunction was improper.²⁰⁹ First, it prevented the insurance company from invoking the bankruptcy court's section 105 injunctive powers.²¹⁰ According to the court, "to whatever extent a conflict may arise between the authority of the Bankruptcy Court to administer this complex reorganization and the authority of the District Court to administer consolidated pretrial proceedings, the equities favor maintenance of the unfettered authority of the Bankruptcy Court."²¹¹ The second reason the injunction was improper was that it prevented the insurance company from seeking the bankruptcy court's determination of the automatic stay.²¹² The court also noted that the equities favored allowing the bankruptcy court, over the district court, to determine the applicability of the stay.²¹³ Noting the potential pitfalls with respect to a bankrupt's participation in multi-district litigation, the court warned, "[i]f the applicability of the stay . . . is determined in various district courts throughout the country, the ability of the Bankruptcy Court to assure equality of treatment among creditors will be seriously threatened."²¹⁴ The best solution, the court advised, is to "centraliz[e] construction of the automatic stay in the Bankruptcy Court"²¹⁵

Baldwin is a difficult case to understand because it seems to send mixed messages. Namely, while holding it is generally permissible for a district court to determine the applicability of the automatic stay, *Baldwin* also seems to suggest that certain circumstances may warrant deferring the issue to the bankruptcy court to make that determination.²¹⁶ The Ninth Circuit, in *Gruntz*, chose to ignore *Baldwin*, partly because it characterized the *Baldwin* court's comments on automatic stay jurisdictional issues as dicta. Additionally, the *Gruntz* court distinguished that case from *Baldwin*, since the *Gruntz* case concerned a federal district—rather than state—court's power to determine the reach of the automatic stay.²¹⁷ Whatever the case, other courts have used *Baldwin* to support the proposition that state courts do

208. *Baldwin-United Corp. Litig.*, 765 F.2d at 349.

209. See *id.* at 347 (noting that the injunction "improperly interferes with the reorganization proceedings in two significant respects").

210. *Id.*

211. *Id.* at 348.

212. *Id.*

213. *Id.*

214. *Baldwin-United Corp. Litig.*, 765 F.2d at 349.

215. *Id.*

216. See *supra* n. 215 and accompanying text.

217. See *Gruntz*, 202 F.3d at 1083 n. 7 (distinguishing *Gruntz* from *Baldwin-United Corp. Litig.*).

have jurisdiction to determine the stay's applicability.²¹⁸ In two cases decided in 1999, *In re Glass*²¹⁹ and *In re Greene*,²²⁰ the courts reached that conclusion on facts somewhat similar to *Gruntz*.²²¹

In *Glass* the debtor filed for Chapter 13 bankruptcy protection after a state court ordered him to pay his wife \$1,500 per month until full satisfaction of a lump sum alimony payment resulting from the couple's divorce decree.²²² When he failed to make one of his required monthly alimony payments, the debtor's wife and her lawyers filed a contempt citation in state court.²²³ The state court determined that the alimony payments were exempt from the automatic stay, and held the debtor in contempt.²²⁴ The debtor alleged the state court's actions violated the automatic stay, and asked the bankruptcy court to award sanctions.²²⁵

The bankruptcy court in *Glass* held that the state court, in determining that the alimony payments were excluded from the automatic stay, acted within its jurisdiction.²²⁶ In arriving at its conclusion, the court examined the Ninth Circuit's Panel Decision in *Gruntz*.²²⁷ The court took issue with the *Gruntz* Panel's holding that "state court jurisdiction to determine [the automatic stay's] scope 'would be inconsistent with and subvert the exclusive jurisdiction of the federal courts.'"²²⁸ The court noted that interpreting the scope of the automatic stay "is not so closely linked to the bankruptcy court's exclusive jurisdiction over the case itself."²²⁹ The court then explained that "because a proceeding to determine the applicability of the automatic stay does not constitute a bankruptcy case, the exclusivity of jurisdiction

218. See e.g. *infra* n. 221 and accompanying text.

219. 240 B.R. 782 (Bankr. M.D. Fla. 1999).

220. 1999 WL 689711 (E.D. Pa. Sept. 9, 1999).

221. See *Gruntz*, 202 F.3d at 1077 (debtor owed money for child support). The court in another case recognized the well-settled principle that "bankruptcy courts do not have exclusive jurisdiction in determining the applicability of the automatic stay." *In re Watson*, 192 B.R. 739, 746 (B.A.P. 9th Cir. 1996) (citing *Baldwin-United Corp. Litig.*, 765 F.2d at 347). The court also held that a state court had the authority to determine the applicability of a discharge injunction, because the discharge injunction "replaces the automatic stay after discharge is entered." *Id.* (citing *In re Am. Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989)); *In re Con. of African Union First Colored Methodist Protestant Church*, 184 B.R. 207 (Bankr. D. Del. 1995). The court in that case relied on *Baldwin* and others to support its conclusion that "[s]ince a non-bankruptcy court has the right to consider whether the automatic stay order applies to matters before it, it logically follows that the parties before that court have the right . . . to express to that court their views on whether the stay order applies to such matters." *Id.* at 216 (citing *Baldwin-United Corp. Litig.*, 765 F.2d at 347).

222. *Glass*, 240 B.R. at 783.

223. *Id.* at 784.

224. *Id.*

225. *Id.*

226. *Id.* at 788.

227. *Id.* at 787 (citing *Gruntz*, 166 F.3d 1020).

228. *Glass*, 240 B.R. at 787 (citing *Gruntz*, 166 F.3d at 1024).

229. *Id.* at 787 n. 4.

provision of [section] 1334(a) does not apply.”²³⁰ Next, the court accused the Ninth Circuit Panel of failing to recognize that section 1334(b) grants bankruptcy courts only original, not exclusive, jurisdiction to determine the applicability of the stay.²³¹ Ultimately, the court dismissed the *Gruntz* Panel Decision in favor of the holdings in *Baldwin* and other cases by concluding “the applicability of the automatic stay falls concurrently within the purview of the bankruptcy court and that of the state court.”²³² However, the court cautioned that determining the applicability of the stay and granting relief from the stay’s provisions are separate and distinct notions.²³³

In *Greene* the District Court for the Eastern District of Pennsylvania considered the propriety of a bankruptcy court’s decision to abstain from hearing a debtor’s complaint which alleged, among other things, that a state court violated the automatic stay by ordering the debtor to pay child support.²³⁴ The Chapter 7 debtor’s complaint alleged mainly violations of state law, but also included an allegation that the state court, in declaring him the presumptive father of his wife’s child, and ordering him to provide support, violated the automatic stay.²³⁵ In addition, the complaint asked the bankruptcy court to determine the dischargeability of the support obligation.²³⁶ The bankruptcy court in *Greene* refused to hear the debtor’s case on permissive abstention grounds and dismissed it.²³⁷ The debtor appealed.²³⁸

In affirming the bankruptcy court, the district court noted that the bankruptcy court has discretion to abstain from hearing the case depending on the balance of certain factors where the only core bankruptcy issues are “inextricably intertwined with the predominant claim of the Plaintiff.”²³⁹ After assessing the relevant factors the court concluded that the bankruptcy court correctly abstained from hearing the debtor’s case, agreeing with the bankruptcy court that the debtor’s complaint had “an element of forum shopping.”²⁴⁰

Next, the court addressed whether the bankruptcy court was correct in holding that the state court had concurrent jurisdiction to determine the applicability of the automatic stay.²⁴¹ The district court agreed with the bankruptcy court that “although the state court did not

230. *Id.* at 787.

231. *See id.* (citing 28 U.S.C.A. § 1334(b) (West 2001)).

232. *Id.*

233. *Id.* at 787 n. 5.

234. *Greene*, 1999 WL 689711 at *1.

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* at *2 (quoting *Greene*, 1999 WL 138905 at *4.

240. *Greene*, 1999 WL 689711 at *3.

241. *Id.*

have jurisdiction to grant relief from the automatic stay, it had concurrent jurisdiction with the bankruptcy court to determine the scope of the stay."²⁴²

Baldwin, Glass, Greene, and the litany of other cases that reach the same result clearly indicate that jurisdiction to determine the applicability of the automatic stay rests concurrently with bankruptcy courts and other courts that are asked to rule on the stay's reach in the course of pending litigation.²⁴³ The number and consistency of these opinions suggest that *Gruntz* is out of sync with most jurisdictions on this issue. Recent criticism of the opinion itself suggests there may be other problems with *Gruntz* jurisdictional holding as well.

2. Recent Criticism From Within the Ninth Circuit

In *In re Lenke v. Tishler*,²⁴⁴ a bankruptcy court criticized the Ninth Circuit's holding that federal, rather than state, courts have the power to modify the automatic stay.²⁴⁵ Referring to the decision as "troubled and troubling," the *Lenke* court attacked the Ninth Circuit's holding as being unclear and open to several interpretations.²⁴⁶

In *Lenke*, the debtor filed for Chapter 11 bankruptcy protection (later converted to Chapter 7) after he was indicted for embezzling \$30,000 from a former business in which he was a partner.²⁴⁷ His listed debts, which included the \$30,000 allegedly stolen from the business, were discharged just before his criminal trial began.²⁴⁸ At the same time the debtor also notified the criminal court of his bankruptcy, and "asserted that the criminal trial would violate his discharge injunction because it was a disguised effort to collect a discharged debt."²⁴⁹ When the court told him the criminal trial would proceed unless he got an injunction from the bankruptcy court, the debtor filed an adversary complaint seeking injunctive relief against the state criminal prosecution.²⁵⁰

The principle issue in *Lenke* was "whether a bankruptcy court may enjoin a criminal prosecution that allegedly violate[d] the discharge injunction because it [was] intended as a debt collection."²⁵¹ However,

242. *Id.* (citing *Greene*, 1999 WL 138905 at *7-*9). The court also cited to *Brock*, 829 F.2d at 387. The *Brock* opinion cited *Baldwin* in support of the proposition that bankruptcy courts share jurisdiction over determining the reach of the automatic stay with other courts. See *supra* n. 201.

243. *Supra* nn. 215, 232, 242 and accompanying text.

244. 249 B.R. 1 (Bankr. D. Ariz. 2000).

245. *Id.* at 5-6.

246. *Id.*

247. *Id.* at 3.

248. *Id.* at 2.

249. *Id.*

250. *Lenke*, 249 B.R. at 3.

251. *Id.* at 7.

the court also addressed the related issue of whether a state has the power to construe the provisions of the automatic stay.²⁵² In resolving this second issue the court revealed the critical problem with the *Gruntz* holding: that the Ninth Circuit never clearly determined whether states have the power to interpret the automatic stay.²⁵³ As evidence of this open question, the *Lenke* court pointed to the fact that the Ninth Circuit en banc opinion reframed the issue stated by the panel decisions.²⁵⁴ As a result, the court considered and decided only the specific issue of whether states have the power to *modify* the automatic stay.²⁵⁵ This mischaracterization, according to the *Lenke* court, left open four possible readings of the *Gruntz* holding.²⁵⁶

Before deciding which of the four readings was right, the *Lenke* court limited the *Gruntz* holding that the automatic stay does not reach state court criminal prosecutions brought against a debtor.²⁵⁷ First, the court pointed to section 105 of the Bankruptcy Code,²⁵⁸ which allows the bankruptcy court to enjoin state proceedings "that are not subject to the automatic stay but that threaten the bankruptcy estate."²⁵⁹ The court then added that injunctive powers are "not limited by the delineated exceptions to the automatic stay, nor confined to civil proceedings."²⁶⁰

Next, the court reinforced the importance of the bankruptcy court's injunctive power in maintaining the supremacy and uniformity of bankruptcy law, a policy which "requires bankruptcy courts to retain the power to uphold the discharge should a state attempt to use its criminal

252. *Id.*

253. *Id.* at 6.

254. *Id.*

255. *Id.* at 8.

256. *Lenke*, 249 B.R. at 6-7. According to the court, the possibilities are as follows:

1. The state court should proceed with the prosecution . . . without asking whether it is stayed, because state courts lack jurisdiction to determine the scope of the automatic stay.
2. The state court should await a bankruptcy court's determination that the criminal prosecution is stayed, because only bankruptcy courts have jurisdiction to make that determination
3. The state court should determine, based on § 362(b)(1) and the holding of *Gruntz*, that criminal prosecutions are not stayed, and therefore proceed with the prosecution, because under the first holding of *Gruntz*, based on how the Ninth Circuit stated the issue, state courts lack jurisdiction only to modify an automatic stay, not jurisdiction to determine its applicability.
4. The state court should determine the applicability of the automatic stay because it is not bound by the rulings of any federal court except the U.S. Supreme Court . . . and state courts have their own precedents to follow construing the automatic stay.

Id. at 7.

257. See *id.* at 7 (noting that the *Gruntz* opinion does not mean all criminal actions are allowed during bankruptcy).

258. 11 U.S.C.A. § 105 (West 2001).

259. *Lenke*, 249 B.R. at 7 (quoting *Gruntz*, 202 F.3d at 1086).

260. *Id.* (quoting *Gruntz*, 202 F.3d at 1086).

processes to collect a discharged debt.”²⁶¹ Then the court made a puzzling argument: injunctive relief should “remain available in bankruptcy courts because if the [*Gruntz*] jurisdictional holding is read broadly, then state courts would lack jurisdiction to determine, at least conclusively, the more difficult issues of whether . . . a restitution order constitutes a debt that has been or can be discharged.”²⁶² The court followed this statement by holding that the *Gruntz* jurisdictional holding applied to dischargeability of debts as well as to the automatic stay because discharge determinations are also core proceedings.²⁶³ The court then argued that the *Gruntz* holding should be read narrowly in light of existing precedent that has allowed state courts to rule on dischargeability of debts when raised as a defense.²⁶⁴ In support of allowing state courts to determine dischargeability of debts, the court quoted *Davenport*²⁶⁵ for the proposition that past bankruptcy precedent should be left alone unless Congress intends otherwise.²⁶⁶ The court then announced that there was no such congressional intent in any of the relevant provisions of the Bankruptcy Code or in Title 28.²⁶⁷

The court ultimately concluded that the narrow interpretation it proposed in option three²⁶⁸ was “the most felicitous to the language of the [*Gruntz*] opinion and the history of bankruptcy law.”²⁶⁹ The court noted,

Because it would be such a radical departure from accepted law to deprive state courts of jurisdiction to determine whether a debt has been discharged, it makes better sense to read [*Gruntz*] as similarly not depriving state courts of jurisdiction to determine the applicability of the automatic stay in the first instance, but only as denying them jurisdiction to modify the stay.²⁷⁰

Having decided the jurisdictional issue, the court turned to whether bankruptcy courts should be bound by state court determinations of the applicability of the automatic stay or discharge of debts.²⁷¹ The court

261. *Id.* at 8.

262. *Id.* If state courts cannot interpret the discharge status of a debt, which is the result under a broad reading of *Gruntz*, then it is strange to argue this as a justification for section 105 injunctive powers remaining available in the bankruptcy courts. See *Id.*

263. *Id.*

264. *Id.* (citing *Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934); W.M. Moore, *Collier on Bankruptcy* vol. 1A, ¶ 17.28, 1739 (14th ed., Matthew Bender 1978)). A narrow reading of the *Gruntz* jurisdictional holding would allow state courts to determine the applicability of the automatic stay, and by extension, whether a debt has been discharged or not.

265. 495 U.S. 552 (1990).

266. *Lenke*, 249 B.R. at 9 (quoting *Davenport*, 495 U.S. at 563).

267. *Id.* (quoting from the relevant Code provisions).

268. See *supra* n. 257. Option three refers to having the state court use section 362 and the *Gruntz* holding to determine that criminal prosecutions are not stayed and then “proceed with prosecution.” *Id.* at 7.

269. *Lenke*, 249 B.R. at 10.

270. *Id.*

271. *Id.*

noted two possible answers within the *Gruntz* opinion.²⁷²

The court then noted an authoritative case on the issue, *In re Pavelich v. McCormick, Barstow, Sheppard, Wayte & Carruth LLP*.²⁷³ The *Lenke* court suggested the case stands for the proposition that once a state court has made a factual determination as to discharge or the automatic stay, that determination precludes the bankruptcy court from redeciding the same issue.²⁷⁴ Since the facts in *Lenke* showed that the debtor asked the bankruptcy court to enjoin the state trial before it began, the court argued that issue preclusion was not a problem and that *Gruntz* supported its authority to “determine whether a criminal prosecution violates a discharge and, if so, to enjoin it under [section] 105.”²⁷⁵

In the end, *Lenke* may prove tougher to divide or apply than the *Gruntz* case it criticized for being “troubled and troubling.”²⁷⁶ Although *Lenke* raised some important questions, it remains to be seen whether *Gruntz* prevents a state from simply determining if the automatic stay applies. A closer look at *Gruntz* reveals the probable answer.

3. What *Gruntz* Really Says about Jurisdiction to Determine the Reach of the Stay

Gruntz, even though ripe with ambiguity, should be read as denying state courts jurisdiction to determine the applicability of the automatic stay. This is true for three reasons. First, the court chose to frame the issue as “whether a state court modification of the bankruptcy automatic stay binds federal courts.”²⁷⁷ Recall that, under section 157(b)(2)(G), “motions to terminate, annul, or modify the automatic stay” are core proceedings within the exclusive jurisdiction of the bankruptcy court.²⁷⁸ By using the word “modification” in lieu of the phrase “determination of the applicability of,” the court avoided the issue of whether the state court’s action was a core proceeding.²⁷⁹ Because modifications of the automatic stay do constitute core proceedings, the court was free to say that the state court was prohibited from acting in this regard.

272. *Id.* The court suggested *Gruntz* could be read two ways: 1) that bankruptcy courts have primacy in interpreting the Bankruptcy Code, thus state court determinations that might interfere with the bankruptcy court’s plenary authority would be invalid; and 2) a state court acting when a stay has been lifted is the same as the state court acting as if the stay never applied at all, so if the former is entitled to “full faith and credit” (including issue preclusion and *Rooker-Feldman*) then so should the latter. *Id.* at 10 (citing *Gruntz*, 202 F.3d at 1084).

273. 229 B.R. 777 (B.A.P. 9th Cir. 1999).

274. *Lenke*, 249 B.R. at 10-11 (citing *Pavelich v. McCormick, Barstow, Sheppard, Wayte & Carruth LLP*, 229 B.R. at 783-84).

275. *Id.* at 11.

276. *Id.* at 5.

277. *Gruntz*, 202 F.3d at 1077.

278. 28 U.S.C.A. § 157(b)(2)(G) (West 2001).

279. *Gruntz*, 202 F.3d at 1077.

The second reason *Gruntz* supports jurisdiction over the applicability of the stay resting solely with bankruptcy courts is that the court chose not to adopt the holding in *Baldwin*.²⁸⁰ By refusing to extend *Baldwin's* holding to state courts,²⁸¹ the Ninth Circuit implicitly suggested that state courts lack jurisdiction to determine the applicability of the automatic stay.

The third and most convincing reason that *Gruntz* denies state courts jurisdiction to determine the reach of the stay is the presence of express language in the opinion. The court clearly stated that "the final decision concerning the applicability of the automatic stay must rest with the federal courts."²⁸² The court also noted that "[b]ecause of the bankruptcy court's plenary power over core proceedings, the County's argument that states have concurrent jurisdiction over the automatic stay . . . is unavailing."²⁸³

IV. CONCLUSION

Should *Gruntz*, or a case which raises similar issues, reach the Supreme Court, the Court will most likely affirm the holding that criminal prosecutions, or actions continuing them, against the debtor are beyond the reach of the automatic stay. The plain meaning standard for interpreting Bankruptcy Code provisions, and the fact that the tide is turning toward a more narrow view of section 362(b)(1) both support this assertion. As to the jurisdictional holding, the Court will either 1) side with the *Gruntz* court and clarify the opinion to include not just modifications of the automatic stay, but state court applicability determinations as well, or 2) allow states to conditionally determine the applicability of the automatic stay. The second alternative comports with common sense. If the state court determines that the stay does apply, it would delay proceedings against the debtor until the stay lifted. In this scenario there would be no harm done if the state's determination proved to be wrong. On the other hand, if the state court incorrectly concludes that the stay does not apply and proceeds against the debtor, any judgment it renders against the debtor would be declared void. A more practical approach says that whichever sovereign ultimately decides the issue is irrelevant anyway, since 362(b)(1) appears air-tight.

Bankruptcy courts remain the center of the bankruptcy universe. However, given the limits of the automatic stay with respect to state criminal proceedings against the debtor, and the prevailing opinion that

280. See *id.* at 1083 (holding that the federal courts have the final determination of the applicability of the stay); *id.* at 1083 n. 7 (discussing that "the County's reliance on dicta" in *Baldwin* was incorrect).

281. See *id.*

282. *Id.* at 1084.

283. *Id.* at 1082-83.

state courts have concurrent jurisdiction over automatic stay applicability determinations, it is clear that bankruptcy courts are not the sole center of this universe. Thus, Foucault's pendulum is alone and absolute as it ceaselessly swings: "given momentum by the instability of the solid floor beneath it."²⁸⁴

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284. Sauer, *supra* n. 1.

