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# ARTICLE

## THE ROAD FROM WELFARE TO WORK: INFORMAL TRANSPORTATION AND THE URBAN POOR

NICOLE STELLE GARNETT\*

*Individuals struggling to move from welfare to work face numerous obstacles. This Article addresses one of those obstacles: lack of transportation. Without reliable transportation, many welfare recipients are unable to find and maintain jobs located out of the reach of traditional forms of public transportation. Professor Garnett argues that lawmakers should remove restrictions on jitney services, allowing entrepreneurs to provide low-cost transportation to their communities. This reform would not only help people get to work, but it could also provide jobs for low-income people.*

[Angela Jackson] gets up at 6 a.m. and is out the door with her two children and heading to day care by 6:30. By 6:50, she's waiting for the No. 9 Metro bus in front of the Wal-Mart on Route 1. It takes her to Old Town Alexandria, where she . . . wait[s] for another bus. It winds through Alexandria and eventually drops her near the Burlington Coat Factory in Baileys Crossroads, where she is paid \$6.50 an hour as a clerk. Distance: about 11 miles. Time from home to work: two hours plus.<sup>1</sup>

If Laura Garcia had a car, it would take half an hour to get from her live-in housekeeping job . . . to a second domestic job . . . . Without one, she rides a train, a bus and then another train, spending four hours and \$30 for a round trip. If Luis Alvarez had a car, he would drive home . . . after working a double shift here, tending a cash register by day at Burger King and another by night at a Friendly's ice cream parlor. Instead, he must pay

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<sup>1</sup> Alice Reid, *For Many New Hires, Getting There Is Half the Battle*, WASH. POST, Dec. 23, 1996, at B1.

\$14 for a cab, since Westchester County's Bee-Line bus system has no late service on the No. 19 line.<sup>2</sup>

Four years ago, Congress enacted landmark legislation overhauling the federal welfare system. Congress required welfare recipients to obtain employment within two years and prohibited states from using federal welfare funds to assist adults for more than five years during their lifetimes.<sup>3</sup> Opponents, including many respected policy experts, warned that these provisions would wreak havoc on hundreds of thousands of poor families with young children.<sup>4</sup> The currently booming economy so far has been able to absorb individuals leaving the welfare rolls, and early results of the new program have substantially exceeded expectations.<sup>5</sup> This is not to say that the transition to the new regime has been

<sup>2</sup> Jane Gross, *Poor Without Cars Find Trek to Work Can Be a Job*, N.Y. TIMES, Nov. 18, 1997, at A1.

<sup>3</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, 2112-61 (codified as amended at 42 U.S.C. §§ 601-619 (2000)), eliminated the 60-year-old federal welfare entitlement program, Aid to Families with Dependent Children, and replaced it with a new program, Temporary Assistance for Needy Families ("TANF"). TANF gives states a great deal of leeway in implementing federal welfare policy. Federal welfare funds are now distributed to states in the form of lump-sum "block grants," which states are free to spend toward achieving the broad goals established by Congress, subject to a few limitations, including work requirements and time limits. *Id.* § 103.

<sup>4</sup> See, e.g., 141 CONG. REC. 25,130 (1995) (statement of Sen. Moynihan (D-N.Y.)) ("If this administration wishes to go down in history as one that abandoned, eagerly abandoned, the national commitment to dependent children, so be it. I would not want to be associated with such an enterprise, and I shall not be."); Mary Jo Bane, Editorial, *Stand By for Casualties*, N.Y. TIMES, Nov. 10, 1996, § 4, at 13; Editorial, *A Children's Veto*, WASH. POST, July 25, 1996, at A28; E.J. Dionne, Jr., Editorial, *In the Wake of a Bogus Bill*, WASH. POST, Aug. 5, 1996, at A19; Daniel P. Moynihan, Editorial, *When Principle Is at Issue*, WASH. POST, Aug. 4, 1996, at C7; Merri Rosenberg, *Overhaul of Welfare Prompts Uncertainties*, N.Y. TIMES, Aug. 25, 1996, § 13 (Westchester Weekly), at 8; Isabel Sawhill & Sheila Zedlewski, Editorial, *A Million More Poor Children: Even if more of their mothers are working*, WASH. POST, July 26, 1996, at A27.

<sup>5</sup> See, e.g., Carey Goldberg, *Most Get Work After Welfare, Studies Suggest*, N.Y. TIMES, Apr. 17, 1999, at A1; Judith Havemann, *Tough Steps Credited for Welfare Dip: Heritage Foundation Study Sees Economy Having Little Impact on Caseloads*, WASH. POST, May 10, 1999, at A2; Nancy L. Johnson, Editorial, *The Results Are In: Welfare Reform Works*, WALL ST. J., Aug. 24, 1999, at A18; Michael Kelly, Editorial, *Assessing Welfare Reform*, WASH. POST, Aug. 4, 1999, at A21; Carol Kleiman, *Firms Share Secret of Work Programs*, CHI. TRIB., Aug. 22, 1999, § 6, at 1; Gretchen Odegard, Letter, *Welfare Reform a Success*, WASH. POST, Jan. 10, 2000, at A18. *But see* Christina Duff, *Why a Welfare "Success Story" May Go Back on the Dole*, WALL ST. J., June 15, 1999, at A20; Peter Edelman, *Clinton's Cosmetic Poverty Tour*, N.Y. TIMES, July 8, 1999, at A27; Peter Edelman, Letter, *Who Is Worrying About the Children?*, WASH. POST, Aug. 11, 1999, at A18; George Melloan, Editorial, *"Save the Problem!" Is the Battle Cry of Bureaucrats*, WALL ST. J., Aug. 31, 1999, at A23; Shailagh Murray, *Drop in Food-Stamp Rolls Is Mysterious and Worrisome*, WALL ST. J., Aug. 2, 1999, at A20; Hanna Rosin & John F. Harris, *Welfare Reform Is on a Roll: Working Poor Still Struggle, Study Says*, WASH. POST, Aug. 3, 1999, at A1; Donna St. George, *Aid Cuts Make It Hard for Some Going From Welfare to Work*, WASH. POST, Feb. 25, 1999, at B5; Kathy Sawyer, *Poorest Families Are Losing Ground; Female-Headed Households' Gains Erode as Welfare Reform Starts, Study Says*, WASH. POST, Aug. 22, 1999, at A7.

entirely smooth or that the current welfare reform "honeymoon" will continue indefinitely.<sup>6</sup> Even in this robust economy, individuals struggling in good faith to move from welfare to work consistently run up against a number of roadblocks. This article addresses one such roadblock: the fact that welfare recipients often lack reliable transportation to and from work.<sup>7</sup>

Due in large part to the suburbanization of the American economy, inadequate transportation drastically limits the job prospects of low-income individuals, especially those who live in inner-city neighborhoods.<sup>8</sup> Since Congress enacted welfare reform legislation, federal, state,

<sup>6</sup> See, e.g., SARAH BRAUNER & PAMELA LOPREST, WHERE ARE THEY NOW: WHAT STATE'S STUDIES OF PEOPLE WHO LEFT WELFARE TELL US (Urb. Inst., New federalism: Issues and Options for States, No. A-32, 1999) (arguing that the available data offer an unclear picture of welfare reform); CENTER ON URB. & METRO. POLICY, BROOKINGS INST., THE STATE OF WELFARE CASELOADS IN AMERICA'S CITIES 1 (1999) (finding that some urban counties have experienced increases in welfare caseloads disproportionate to those in non-urban counties); see also Raymond Hernandez, *Most Dropped From Welfare Don't Get Jobs*, N.Y. TIMES, Mar. 23, 1998, at A1; Editorial, *Less Poverty, Sharper Pain*, WASH. POST, Dec. 26, 1999, at B6; Pamela Loprest, *Long Ride From Welfare to Work*, WASH. POST, Aug. 30, 1999, at A19; Sam Mistrano, *Welfare Clock Will Run Out Before Job Supply Catches Up*, L.A. TIMES, July 16, 1999, at A15; *Study Says Welfare Changes Made the Poorest Worse Off*, N.Y. TIMES, Aug. 23, 1999, at A13; Michael M. Weinstein, *Economic Scene: When Work Is Not Enough; Without Training, Success of Welfare Overhaul May Falter*, N.Y. TIMES, Aug. 26, 1999, at C1; Editorial, *Welfare Happy Talk*, WASH. POST, Aug. 25, 1999, at A16.

<sup>7</sup> See generally U.S. GEN. ACCOUNTING OFFICE, WELFARE REFORM: TRANSPORTATION'S ROLE IN MOVING FROM WELFARE TO WORK (1998) [hereinafter WELFARE TO WORK] (discussing the need for additional transportation to link welfare recipients and jobs); ANNALYNN LACOMBE, U.S. DEP'T OF TRANSP., WELFARE REFORM AND ACCESS TO JOBS IN BOSTON 2 (1998) [hereinafter JOBS IN BOSTON] (discussing transportation impediments faced by welfare recipients in Boston); Claudia Coulton et al., *Housing, Transportation, and Access to Suburban Jobs by Welfare Recipients in the Cleveland Area*, in THE HOME FRONT: IMPLICATIONS OF WELFARE REFORM FOR HOUSING POLICY 123 (Sandra J. Newman ed., 1999) [hereinafter CLEVELAND STUDY] (discussing transportation shortcomings in Cleveland). For accounts of this problem in the popular press, see Eric Bailey, *From Welfare Lines to Commuting Crush: Many Reentering Work Force Live Far From Jobs; Experts Fear Transit Woes May Slow Reform*, L.A. TIMES, Oct. 6, 1997, at A1; Carla Crowder, *Welfare Recipients Hit Bumps on Road to Work: Transportation Problems Present an Extra Challenge as People Begin New Jobs*, DENVER ROCKY MTN. NEWS, Feb. 2, 1998, at 5A; David Goldberg, *A Long Road to Self-Sufficiency: As Welfare Recipients Find Work, Many Stumble on a Simple Obstacle—Transportation To And From The Job*, ATLANTA J. & CONST., Oct. 6, 1997, at E8; Jane Gross, *Poor Without Cars Find Trek to Work Can Be a Job*, N.Y. TIMES, Nov. 18, 1997, at A1; Evan Halper, *Public-Transportation Drawbacks Hurt Welfare-to-Work Transitions*, PHILA. INQUIRER, Mar. 4, 1999, at B3; Pat Kossan, *On Welfare Road Without Wheels: Recipients Must Get to Jobs or Lose Benefits*, ARIZ. REPUBLIC, Feb. 8, 1998, at A1; Michael K. McIntyre & James F. Sweeney, *The Workout Before Work: Without a Car, People Who Live in the City and Work in the Suburbs Face an Arduous Commute; Others Have No Way to Get There at All*, PLAIN DEALER (Cleveland), July 27, 1997, at 1A; Alice Reid, *For Many New Hires, Getting There is Half the Battle*, WASH. POST, Dec. 23, 1996, at B1.

<sup>8</sup> See *infra* notes 16–41 and accompanying text. For a discussion of the effects of suburbanization on the job prospects of inner-city residents, see generally Michael H. Schill, *Deconcentrating the Inner City Poor*, 67 CHI-KENT L. REV. 795, 798–808 (1991) (discussing the "spatial mismatch" hypothesis as a cause of concentration of poverty in the United States); Q. Shen, *Location Characteristics of Inner-City Neighborhoods and Em-*

and local officials have implemented a wide range of programs designed to alleviate the long-standing and seemingly intractable problems caused by inadequate transportation.<sup>9</sup> They have, however, overlooked one important alternative: amending the laws that prohibit low-income "bootstraps capitalists" from providing low-cost, private, commuter van—or "jitney"—service to fill in the gaps inevitably left by even the best public transportation system. The prohibitions on such services make little sense in this era of welfare reform, especially because the experiences of two American cities (Miami and New York), where such services operate in the informal economy, demonstrate that jitneys could serve the dual purposes of taking people to work and putting people to work.<sup>10</sup>

Part I of this Article explains why adequate transportation constitutes a necessary component of any welfare reform effort. Part II summarizes current efforts to augment transportation alternatives available to the poor. Part III sets forth evidence, both historical and current, that private jitney services operated by low-income entrepreneurs could fill the transportation gaps that inhibit welfare reform efforts. The discussion concentrates on evidence from New York City and Miami, where such services have proven invaluable to poor residents. Part IV outlines how the law currently precludes such services. The Article concludes with Part V's proposal for legislative reforms that would harness the potential of willing entrepreneurs while at the same time addressing the legitimate health and safety concerns raised by lawmakers.

## I. WELFARE AND TRANSPORTATION: THE EVIDENCE

Social scientists and policymakers have long known that inadequate transportation contributes significantly to the economic isolation that plagues America's inner cities. In the late 1960s, for example, California Governor Edmund G. Brown established the "McCone Commission" to investigate the root causes of the civil unrest that culminated in the Watts riots in Los Angeles.<sup>11</sup> One of the commission's major findings concerned the transportation problems of Watts residents:

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*ployment Accessibility of Low-Wage Workers*, 25 ENV'T & PLANNING B: PLANNING AND DESIGN 345, 353-54 (1997). But cf. Brian D. Taylor & Paul M. Ong, *Spatial Mismatch or Automobile Mismatch? An Examination of Race, Residence, and Commuting in US Metropolitan Areas*, 32 URB. STUD. 1453, 1454 (1995) (discussing the link between job access and inadequate transportation).

<sup>9</sup> See *infra* text accompanying notes 140-168.

<sup>10</sup> See *infra* notes 202-281 and accompanying text. Throughout this Article, I use the term "informal economy" rather than "underground economy" or "black market" because, as the discussion that follows will demonstrate, the activities of illegal jitneys operating in Miami and New York are so highly visible that they can hardly be considered "underground" in any true sense of the term. See Richard A. Epstein, *The Moral and Practical Dilemmas of an Underground Economy*, 103 YALE L.J. 2157, 2164 (1994).

<sup>11</sup> GOVERNOR'S COMM'N ON CIVIL DISORDERS, VIOLENCE IN THE CITY—AN END OR A BEGINNING? 65 (1965).

Our investigation has brought into clear focus the fact that the inadequate and costly public transportation currently existing throughout the Los Angeles area seriously restricts the residents of the disadvantaged areas such as south central Los Angeles. This lack of adequate transportation handicaps them in seeking and holding jobs, attending schools, shopping, and in fulfilling other needs. It has had a major influence in creating a sense of isolation, with its resultant frustrations, among the residents of south central Los Angeles.<sup>12</sup>

These concerns were echoed several years later in the final report of the National Advisory Commission on Civil Disorders, or Kerner Commission, which was created by President Lyndon Johnson in response to widespread urban rioting. President Johnson directed the Kerner Commission to answer three basic questions: (1) "What happened?" (2) "Why did it happen?" and (3) "What can be done to prevent it from happening again?"<sup>13</sup> In answering the final question, the commission blamed the economic isolation of the inner cities, concluding that "[p]roviding employment for the swelling Negro ghetto population will require society to link these potential workers more closely with job locations."<sup>14</sup> The commission suggested that one way to accomplish this goal is "by creating better transportation between ghetto neighborhoods and new job locations."<sup>15</sup>

#### A. The "Spatial Mismatch" Hypothesis

As the Kerner Commission's recommendation suggests, the chronic poverty and resulting welfare dependency that plague many inner-city neighborhoods can be explained in part by changes in the American economy. During the past forty years, jobs have disappeared from America's inner cities. The decline has been particularly precipitous in the mass production industries that traditionally provided high-paying jobs for individuals with little formal education.<sup>16</sup> Many economists and sociologists argue that increases in urban poverty and dwindling numbers of well-paying "blue-collar" jobs are inextricably intertwined.<sup>17</sup> Manu-

<sup>12</sup> *Id.*

<sup>13</sup> NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1 (1968).

<sup>14</sup> *Id.* at 217.

<sup>15</sup> *Id.*

<sup>16</sup> See generally Schill, *supra* note 8, at 798-808.

<sup>17</sup> See, e.g., WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS 25-41 (1996).

In the twenty-year period from 1967 to 1987, for example, Philadelphia lost 64% of its manufacturing jobs; Chicago lost 60%; New York City lost 58%; and Detroit lost 51%. In absolute numbers, these percentages represent the loss of 160,000 jobs in Philadelphia, 326,000 in Chicago, 520,000 in New York . . . , and 108,000 in Detroit.

facturing jobs are often supplanted (if they are replaced at all) by white-collar jobs in service-oriented industries,<sup>18</sup> transforming American cities “from centers of the production and distribution of goods to centers of administration, finance, and information exchange.”<sup>19</sup> This transformation does not bode well for many low-skilled, entry-level workers facing welfare time limits and job requirements, as white-collar employers tend to require specialized skills and higher levels of education.<sup>20</sup>

Although the disappearance of manufacturing jobs from American cities is frequently attributed to the globalization of industry, another major trend—suburbanization—has contributed substantially. Since World War II, the United States has experienced a radical population shift. While the majority of the United States population now resides in large metropolitan areas,<sup>21</sup> the residential population *within* these metropolitan areas “has been de-concentrating since at least the First World War.”<sup>22</sup> For example, between 1970 and 1990 there was a decrease in the number of workers residing in central cities, and by 1990 only thirteen percent of black workers lived in urban cores.<sup>23</sup> Metropolitan employment has undergone a similar trend. While major metropolitan counties continue to capture the lion’s share of the nation’s employment growth,<sup>24</sup> employment *within* metropolitan areas has been deconcentrating.<sup>25</sup> In the mid-1970s, the metropolitan employment balance shifted to the suburbs, and it has continued to disperse at a rate of approximately one percent per year.<sup>26</sup> “Between 1970 and 1990, the percentage of white workers

*Id.* at 29–30.

<sup>18</sup> See John D. Kasarda, *Industrial Restructuring and the Changing Location of Jobs*, in STATE OF THE UNION: AMERICA IN THE 1990s 239–40 (R. Farley ed., 1995).

<sup>19</sup> PAUL JARGOWSKI, POVERTY AND PLACE 118 (1996) (quoting John D. Kasarda, *Urban Industrial Transition and the Urban Underclass*, 501 ANNALS AM. ACAD. POL. & SOC. SCI. 526, 528 (1989)); see also Saskia Sassen, *The Informal Economy: Between New Developments and Old Regulations*, 103 YALE L.J. 2289, 2294 (1994) (suggesting that the result of the “decline of mass production as the main engine of national growth and the shift to services as the leading economic sector . . . is a tendency toward increased economic polarization”).

<sup>20</sup> See Kasarda, *supra* note 18, at 246–47 (showing that many major cities have experienced sizable employment losses in industries with low mean levels of employee education and gains in industries that employ better-educated workers). During the 1980s, for example, New York City lost 135,000 jobs in industries in which workers averaged less than 12 years of education and gained almost 300,000 jobs in industries in which workers averaged more than 13 years of education. *Id.*

<sup>21</sup> Mark Alan Hughes, *A Mobility Strategy for Improving Opportunity*, 6 HOUSING POLICY DEBATE 271, 273–74 (1995).

<sup>22</sup> Taylor & Ong, *supra* note 8, at 1454.

<sup>23</sup> Katherine M. O’Regan & John M. Quigley, *Cars for the Poor*, ACCESS, Spring 1998, at 20, 20–21. Furthermore, statistics have indicated that blacks have not been making the transition to the suburbs at the same pace as whites. In each of the 12 largest metropolitan areas, the percentage of blacks living in the central city “was at least four times as high” as the percentage of whites. Hughes, *supra* note 21, at 276.

<sup>24</sup> Kasarda, *supra* note 18, at 220.

<sup>25</sup> Taylor & Ong, *supra* note 8, at 1454.

<sup>26</sup> Kasarda, *supra* note 18, at 235.

with central city jobs declined from 50% to 20%, and the percentage of black workers fell from 61% to 37%.<sup>27</sup> By 1980, 50% of all jobs were located in the suburbs nationwide, with even higher concentrations in the suburbs of major metropolitan areas.<sup>28</sup> The suburbanization of employment has not been uniform; rather, it has been concentrated in those industries that traditionally employ large numbers of individuals lacking formal education and training.<sup>29</sup> "Today, 70% of all jobs in manufacturing, retailing, and wholesaling are located in the suburbs."<sup>30</sup>

As American jobs have become increasingly deconcentrated, American poverty has become increasingly concentrated. In 1959, less than one-third of the country's poor lived in the urban centers of major metropolitan areas.<sup>31</sup> Today, almost one-half of the nation's welfare recipients do, while less than 30% of the population as a whole does.<sup>32</sup> As of 1990, the central cities of the twelve largest metropolitan areas were poorer than their suburbs.<sup>33</sup> "In the nation's one hundred largest central cities, nearly one in seven census tracts is at least 40% poor," with the number of such tracts doubling since 1970.<sup>34</sup>

Many social scientists observing these dual trends—deconcentrating employment and concentrating poverty—attribute the persistent economic dislocation that plagues America's inner cities to the "spatial mismatch" between low-income individuals (especially low-income minority residents) and entry-level employment opportunities.<sup>35</sup> The spatial mismatch hypothesis—first proposed by John Kain in 1964<sup>36</sup>—has

<sup>27</sup> O'Regan & Quigley, *supra* note 23, at 20.

<sup>28</sup> Harry J. Holzer, *The Spatial Mismatch Hypothesis: What Has the Evidence Shown?*, 28 URB. STUD. 105, 107 (1991).

<sup>29</sup> Kasarda, *supra* note 18, at 246. These industries are more likely to locate in the suburbs if there is readily available land and accessibility to major highways. Holzer, *supra* note 28, at 106; see also FARRELL BLOCH, ANTIDISCRIMINATION LAW AND MINORITY EMPLOYMENT: RECRUITMENT PRACTICES AND REGULATORY CONSTRAINTS 124 (1994) (arguing that new businesses "shun urban locations" because of high crime rates and because they want to "avoid buying land from several different owners, paying high demolition costs for old buildings, and arranging parking for employees and customers").

<sup>30</sup> JOBS IN BOSTON, *supra* note 7, at 3.

<sup>31</sup> WILSON, *supra* note 17, at 11.

<sup>32</sup> JOBS IN BOSTON, *supra* note 7, at 3.

<sup>33</sup> See Hughes, *supra* note 21, at 279 (indicating that in Milwaukee, Chicago, Detroit, and Philadelphia, cities were four times poorer; in Washington/Baltimore, New York, St. Louis, and Denver, cities were three times poorer; and in Kansas City, Dallas/Fort Worth, San Francisco/Oakland, and Los Angeles, cities were twice as poor).

<sup>34</sup> WILSON, *supra* note 17, at 14. In these tracts, during a typical week in 1990 there were only 65.5 employed persons for every 100 unemployed adults, a figure that stands in sharp contrast to the situation in nonpoverty areas, which contained 182.3 employed persons for every 100 who did not work. WILSON, *supra* note 17, at 19.

<sup>35</sup> See, e.g., Schill, *supra* note 8, at 798–808 (discussing the "spatial mismatch" hypothesis as the cause of the concentration of poverty in the United States).

<sup>36</sup> John Kain, *Housing Segregation, Negro Employment, and Metropolitan Decentralization*, 82 Q.J. ECON. 175, 197 (1968) (concluding that "the empirical findings do suggest that postwar suburbanization of metropolitan employment may be further undermining the position of the Negro, and that the continued high levels of Negro unemployment in a full



spawned a wealth of empirical studies investigating the connection between job location and urban poverty. Proponents claim that the suburbanization of entry-level jobs contributes to urban unemployment in two ways. First, the decentralization of workers and employment has radically altered the "typical" commute. Between 1970 and 1990, the number of non-poor workers commuting from city residences to city jobs plummeted.<sup>37</sup> During the same time, the rate of "cross-commuting" between suburban homes and suburban jobs or "reverse commuting" between central city homes and suburban jobs increased by twenty-eight percent among all workers, and almost doubled among black workers.<sup>38</sup> By 1990, the number of suburb-to-suburb commuters outnumbered suburb-to-central-city commuters by at least a three-to-one margin,<sup>39</sup> with the "working poor" slightly more likely to "reverse commute" to the suburbs than non-poor workers.<sup>40</sup> As commutes become longer and more expensive, many low-skilled workers rationally determine that certain employment options do not make economic sense. Moreover, the remote location of employment opportunities may impede the job search efforts of inner-city residents.<sup>41</sup>

### B. Spatial Mismatch or Transportation Mismatch?

While the spatial mismatch hypothesis has had enormous influence in policy discussions, scholars have long debated the extent to which job proximity, standing alone, affects the employment prospects of the urban poor.<sup>42</sup> For example, three years after the publication of Kain's article,

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employment economy may be partially attributable to the rapid and adverse (for the Negro) shifts in the location of jobs"); see also Richard Arnott, *Economic Theory and the Spatial Mismatch Hypothesis*, 35 URB. STUD. 1171, 1171-72 (1998) (attributing the theory to Kain).

<sup>37</sup> See O'Regan & Quigley, *supra* note 23, at 21 (noting a decline of 21 percentage points for white workers, and 30 percentage points for black workers).

<sup>38</sup> *Id.*

<sup>39</sup> Kasarda, *supra* note 18, at 237. Intra-suburb commuting now represents the leading commuting trip type, with twice as many workers commuting within the suburbs as undertaking a "traditional" commute from a suburb to a central city. Craig N. Oren, *Getting Commuters Out of their Cars: What Went Wrong?*, 17 STAN. ENVTL. L.J. 141, 168 (1998).

<sup>40</sup> See O'Regan & Quigley, *supra* note 23, at 21.

<sup>41</sup> See Schill, *supra* note 8, at 799; Holzer, *supra* note 28, at 106. See generally Harry J. Holzer et al., *Work, Search, and Travel among White and Black Youth*, 35 J. URB. ECON. 320 (1994).

<sup>42</sup> See, e.g., Schill, *supra* note 8, at 800-04 (discussing the scholarly debate); John F. Kain, *The Spatial Mismatch Hypothesis: Three Decades Later*, 3 HOUSING POL'Y DEBATE 371, 375-438 (1994) [hereinafter *Spatial Mismatch Hypothesis*] (providing a comprehensive literature review); D.T. Elwood, *The Spatial Mismatch Hypothesis: Are Jobs Missing in the Ghetto?*, in THE BLACK YOUTH EMPLOYMENT CRISIS 147-87 (R.B. Freeman & H.J. Holzer eds., 1986) (questioning whether job access affected youth employment rates); John M. Fitzgerald, *Local Labor Markets and Local Area Effects on Welfare Duration*, 14 J. POL'Y ANALYSIS & MGMT. 43, 51 (1995) (finding that local area characteristics are significant for black, but not white, workers); Holzer, *supra* note 28, at 109 (reviewing literature); Keith R. Ihlanfeldt & David L. Sjoquist, *The Effect of Job Access on Black and White Youth Employment: A Cross-sectional Analysis*, 28 URB. STUD. 255, 255-56 (1991).

two economists analyzing the same data rejected his conclusion, finding that residential segregation and job location could not explain the economic position of inner-city minorities.<sup>43</sup> While more recent studies generally have been supportive of the spatial mismatch theory,<sup>44</sup> a number of economists continue to dispute its validity.<sup>45</sup>

Many of the most powerful critiques come from social scientists who use commuting data to rebut the spatial mismatch hypothesis. These critics observe that average commuting distances do not vary significantly among demographic groups.<sup>46</sup> To the extent that there has been variation, relatively affluent white workers commute longer distances than do poor, inner-city minorities.<sup>47</sup> One study conducted by Brian Taylor and Paul Ong found that in both 1977 and 1985 white workers commuted, on average, almost a mile further than minority workers.<sup>48</sup> A similar pattern emerges when the commutes of high- and low-income individuals are compared: the 1990 National Personal Transportation Survey found that individuals earning more than \$40,000 per year commuted, on average, over four miles further to work than individuals earning less than \$10,000.<sup>49</sup> If inner-city minority residents do not, in fact, live farther from their jobs than white suburban residents, then a disappearance of jobs from urban centers cannot, taken alone, explain the persistently high levels of unemployment that plague America's inner cities. These and similar studies have led scholars like Christopher Jencks and Susan Mayer to conclude that the support for spatial mismatch theory "is so mixed that no prudent policy analyst should rely on it . . . . There is as much evidence against such claims as for them."<sup>50</sup>

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(reviewing literature); JARGOWSKY, *supra* note 19, at 124–26 (reviewing literature); John D. Kasarda, *Urban Industrial Transition and the Underclass*, ANNALS AM. ACAD. POL. & SOC. SCI., 501, 526–47 (1989) (endorsing spatial mismatch theory); Holzer, *supra* note 28, at 105 ("[T]he 'spatial mismatch' hypothesis . . . seems to be widely accepted in popular discussions of black employment problems. However, the empirical support for the hypothesis has always been quite hotly contested. Kain's original paper . . . was almost immediately disputed . . . and continues to be so to this day.").

<sup>43</sup> P. Offner & D. Saks, *A Note on John Kain's "Housing Segregation, Negro Employment, and Metropolitan Decentralization,"* 85 Q.J. ECON. 147, 150–51 (1971).

<sup>44</sup> See JARGOWSKY, *supra* note 19, at 124 (reviewing literature and finding emerging consensus).

<sup>45</sup> See *Spatial Mismatch Hypothesis*, *supra* note 42, at 375–93.

<sup>46</sup> For example, one study based upon data from the 1977 and 1983–84 Nationwide Personal Transportation Studies compared commute distances across income, industry group, sex, family status, metro size, place of residence, time of day, and trip purpose, and found no significant variations. Peter Gordon et al., *The Spatial Mismatch Hypothesis: Some New Evidence*, 26 URB. STUD. 315, 316–22 (1989). In fact, the commute distances of inner-city workers tended to be slightly shorter than for suburban workers. *Id.*; see also Paul Ong & Evelyn Blumenberg, *Job Access, Commute and Travel Burden among Welfare Recipients*, 35 URB. STUD. 77, 78–86 (1998); Taylor & Ong, *supra* note 8, at 1453.

<sup>47</sup> See Gordon, *supra* note 46, at 322; Taylor & Ong, *supra* note 8, at 1454, 1457.

<sup>48</sup> Taylor & Ong, *supra* note 8, at 1457.

<sup>49</sup> ALAN E. PISARSKI, NATIONWIDE PERSONAL TRANSPORTATION SURVEY: TRAVEL BEHAVIOR ISSUES IN THE 90s 59 fig. 36 (1992).

<sup>50</sup> Christopher Jencks & Susan Mayer, *Residential Segregation, Job Proximity, and*

Regardless of the extent to which inner-city poverty is attributable to a spatial mismatch problem, there is near-universal agreement about the theory's basic factual predicates—namely, that poverty, particularly among minorities, tends to be concentrated in inner-city neighborhoods and that suburbanization has meant the steady disappearance of entry-level jobs from neighborhoods with the highest concentrations of poor people.<sup>51</sup> These underlying facts lend credence to the conclusion that the availability of adequate transportation affects the job prospects of the urban poor. Even those scholars who remain the most skeptical of a link between job proximity and urban unemployment agree that the lack of access to reliable and efficient transportation impedes inner-city minority residents' job prospects. For them, it is inadequate transportation, rather than the spatial mismatch of entry-level workers and jobs *per se*, that impedes poor minorities' job prospects.<sup>52</sup>

These scholars observe that despite having shorter average commute distances, poor minority workers still spend significantly more time commuting to work than do more affluent white workers.<sup>53</sup> Taylor and Ong hypothesize that this apparent paradox results from minority workers' dependence upon public transportation, which is a significantly slower way to get to work than driving a private automobile.<sup>54</sup> According to the 1995 Nationwide Personal Transportation Survey, public transportation commutes take more than twice as long as private transportation commutes.<sup>55</sup> Between 1983 and 1990, mass transit travel times increased,

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*Black Job Opportunities*, in *INNER CITY POVERTY IN AMERICA* 219 (Lawrence E. Lynn, Jr. & Michael G.H. McGeary eds., 1990).

<sup>51</sup> See Arnott, *supra* note 36, at 1171–72 (“There is little dispute about the empirical basis of the hypothesis: that there are, or at least have been, serious limitations on black residential choice; that there has been a steady dispersal of jobs from central cities; and that rates of employment and earnings of Afro-American workers are relatively low.”).

Although studies based on data collected before 1970 showed no consistent or convincing effects on black employment as a consequence of spatial mismatch, the employment of inner-city blacks relative to suburban blacks has clearly deteriorated since then. Recent research, conducted mainly by urban and labor economists, strongly shows that the decentralization of employment is continuing and that employment in manufacturing, most of which is already suburbanized, has decreased in central cities, particularly in the Northeast and Midwest.

WILSON, *supra* note 17, at 37

<sup>52</sup> See Taylor & Ong, *supra* note 8, at 1471.

<sup>53</sup> See *id.* at 1453, 1457. A more recent study, based on administrative data of AFDC recipients in the Los Angeles metro area, confirmed these results. Ong & Blumenberg, *supra* note 46, at 82.

<sup>54</sup> See Taylor & Ong, *supra* note 8, at 1459, 1460 (finding that transit commute times ranged 63% to 94% longer than driving alone).

<sup>55</sup> PATRICIA S. HU & JENNIFER R. YOUNG, U.S. DEP'T OF TRANSP., SUMMARY OF TRAVEL TRENDS: 1995 NATIONWIDE PERSONAL TRANSPORTATION SURVEY 42 (1999). Public transportation travels significantly slower than private automobiles. Taylor & Ong, *supra* note 8, at 1460.

despite the fact that the average commute distance decreased.<sup>56</sup> It is therefore not surprising that African American workers, who are nearly three times more likely to use public transit than white workers, face longer trips to work.<sup>57</sup>

One recent study of the Boston metropolitan area found that low-income workers living near the central business district actually have higher employment access than those living in the suburbs.<sup>58</sup> The researchers qualified that finding, however, noting that while most suburban jobs are readily accessible by car, only a small percentage are accessible by public transit.<sup>59</sup> They concluded:

What really matters is perhaps not location *per se* but the lack of spatial mobility of a high percentage of low-wage workers to overcome the increasing spatial separation between jobs and residence. The great discrepancy in employment accessibility between auto drivers and transit riders shows clearly that much needs to be done to help low-wage workers who cannot afford a motor vehicle.<sup>60</sup>

Not surprisingly, welfare recipients are much less likely than wealthier individuals to own or have access to an automobile.<sup>61</sup> Without

<sup>56</sup> See PISARSKI, *supra* note 49, at 70-71 (finding that the commuting travel speed of mass transit service decreased from 19.7 miles per hour to 15.2 miles per hour at the same time that automobile commuting speed increased from 31.7 miles per hour to 34.7 miles per hour).

<sup>57</sup> See Taylor & Ong, *supra* note 8, at 1459. "Ongoing metropolitan dispersion of employment has made the private automobile an indispensable employment tool . . ." *Id.* "The importance of the automobile in providing employment access to low-skilled, low-waged labour [sic] can hardly be overstated." *Id.* at 1471.

<sup>58</sup> Shen, *supra* note 8, at 353.

<sup>59</sup> *Id.* at 353-54.

<sup>60</sup> *Id.* at 359. A post-welfare reform survey of unemployed, low-skilled Detroit workers revealed large differences in the patterns of job-search behavior between those who owned cars and those who did not. Car owners' job searches tended to cover wider geographic areas and to yield a broader array of job opportunities. O'Regan & Quigley, *supra* note 23, at 24. Access to an automobile also has affected the outcomes of a program designed to improve employment prospects for non-custodial fathers of welfare-dependent children. An analysis conducted by the Manpower Demonstration Research Corporation concluded that "auto ownership was an 'important prerequisite' to participation in the program, to completion of the job-training program, and ultimately to getting jobs." *Id.*

<sup>61</sup> "Nationally, less than 6 percent of welfare families reported a car as a household asset in 1995." JOBS IN BOSTON, *supra* note 7, at 2. Underreporting undoubtedly artificially suppressed this ownership figure "because previous welfare eligibility rules limiting the value of assets may have led some recipients to 'hide' [car] ownership." *Id.* A more accurate figure is difficult to pinpoint. Kathryn Edin and Laura Lein's study of welfare mothers in four cities (Boston, Charleston, Chicago, and San Antonio) estimated that actual rates of ownership ranged between 8% and 45%. KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK 33 (1997). A job readiness survey conducted by the California Department of Social Services found that 35% of welfare recipients do not have a driver's license and that, even among those who travel to work by car, only 65% own their own car. Evelyn Blumenberg, Steven Moga &

access to an automobile, welfare recipients seeking employment generally face four choices: stay at home, walk, carpool, or rely on public transportation. While data from the 1995 Nationwide Personal Transportation Survey indicate that the latter option is least preferred,<sup>62</sup> low-income individuals must rely on it to a greater extent than others.<sup>63</sup>

Commuting via public transportation is particularly problematic for those workers who live in inner-city areas and work in the suburbs. Most public transportation networks were designed decades ago to bring workers who live in suburban "bedroom communities" to their city jobs each morning and return them home in the evening.<sup>64</sup> These traditionally configured systems do not mesh well with the transportation needs of individuals struggling to go off welfare, many of whom must "reverse commute" from inner-city residences to the suburbs, where the bulk of entry-level jobs are now located. Rarely can conventional, fixed-route, public transportation systems adequately serve reverse commuters. Indeed, while the time differentials between automobile commutes and public transit commutes are large for all types of trips, the differences are most pronounced for those workers who commute from homes located in central-city neighborhoods to jobs located in the suburbs.<sup>65</sup> In 1990, for example, black workers using public transit to travel from central-city residences to suburban jobs averaged more than forty minutes commuting each way; one-way commute times in Chicago, Los Angeles and New York all exceeded fifty minutes.<sup>66</sup>

Commutes to suburban jobs from the homes of lower-skilled workers can take so long<sup>67</sup> that at times, frustrated workers are left feeling as

Paul Ong, GETTING WELFARE RECIPIENTS TO WORK: TRANSPORTATION AND WELFARE REFORM 9-10 (1998) (summary of conference proceedings) (on file author).

<sup>62</sup> For example, although public transportation use is highest among African Americans, it still accounts for only 8.1% of trips completed; walking accounts for 9.9%, and riding in a private car for 77.8%. J. Pucher et al., *Socioeconomics of Urban Travel: Evidence From the 1995 NPTS*, 52 TRANSP. Q. 15, 25 (1998).

<sup>63</sup> See Z. Andrew Farkas, *Reverse Commuting: Prospects for Job Accessibility and Energy Conservation*, 1349 TRANSP. RES. REC. 85, 89 (1992) (discussing public transportation in Baltimore). One 1992 survey of Los Angeles County residents, for example, found that public transportation accounted for only 4.5% of the trips taken by individuals in the highest income quintile, but for 56.3% of the trips taken by individuals in the lowest income quintile. Genevieve Giuliano & James E. Moore II, PUBLIC TRANSPORTATION IN LOW-INCOME COMMUNITIES: A CASE STUDY 7 (Calif. Dep't of Transp., draft final report, July 1999).

<sup>64</sup> See JOBS IN BOSTON, *supra* note 7, at 8; Farkas, *supra* note 63, at 85. For a description of the configuration of public transit see Craig N. Oren, *Getting Commuters Out of Their Cars: What Went Wrong?*, 17 STAN. ENVTL. L.J. 141, 169-70 (1998), and ANTHONY DOWNS, STUCK IN TRAFFIC 16-19 (1992).

<sup>65</sup> See JOBS IN BOSTON, *supra* note 7, at 7-8; WELFARE TO WORK, *supra* note 32, at 1-2; Ihlanfeldt & Sjoquist, *supra* note 42, at 225; Holzer, *supra* note 28, at 106.

<sup>66</sup> Kasarda, *supra* note 18, at 254; Downs, *supra* note 63, at 102; Farkas, *supra* note 63, at 85-86.

<sup>67</sup> See Oren, *supra* note 64, at 169-70; Robert Fishman, *America's New City: Megopolis Unbound*, WILSON Q., Winter 1990, at 24, 24-45; Farkas, *supra* note 63, at 88.

though they “just can’t get there from here.” These facts hold true even in eastern seaboard cities with extensive transit systems. The Department of Transportation’s study of metropolitan Boston, for example, found that the vast majority of entry-level job opportunities available to welfare recipients in the Boston metropolitan area are located in suburban areas that are either under-served or inaccessible by public transportation.<sup>63</sup>

Even when public transportation reaches a suburban job, reverse commuters frequently must transfer several times to reach their ultimate destinations.<sup>69</sup> These transfers increase not only commute times—some reverse commuters must wait as long as one hour between connections<sup>70</sup>—but also the likelihood that something will go wrong along the way, causing a delay that can have disastrous consequences. As a *Washington Post* article recently observed, “[w]hen buses do serve suburban employment centers, the commutes can be long, complicated and circuitous, with a high chance of missed connections, which can mean problems with a boss.”<sup>71</sup>

Finally, limited operating schedules of most public transportation networks frustrate many entry-level workers. Just as most public transportation systems are configured to serve workers commuting from the suburbs into the city, the operating hours of public transportation services are tailored to serve those passengers as well. High-volume services tend to operate during traditional “peak” commuting hours in the morning and early evening.<sup>72</sup> Individuals who work during non-standard hours face long intervals between buses that lengthen already onerous commutes.<sup>73</sup> Others find that their shifts end *after* the final bus home has departed.<sup>74</sup>

These scheduling limitations impose a particular hardship on those who face welfare time limits and work requirements. Low-skilled workers are more likely to work during off-peak hours than the population as a whole.<sup>75</sup> One recent study found that working mothers with limited education are more likely to work in industries where non-traditional schedules are the norm—particularly in service industries, such as restau-

<sup>63</sup> JOBS IN BOSTON, *supra* note 7, at 7–8. Only 32% of potential employers in the Boston area were located within a quarter of a mile of public transit; 43% were located within half a mile, and 58% within a mile. *Id.*

<sup>69</sup> See Claire E. McKnight, *Transportation with Women in Mind*, J. URB. TECH., Fall 1994, at 1, 8.

<sup>70</sup> Jean Love, *Mass Transit: A Barren Promise*, ACROSS THE BOARD, July-Aug. 1992, at 42, 46.

<sup>71</sup> Reid, *supra* note 1.

<sup>72</sup> See CLIFFORD WINSTON & CHAD SHIRLEY, *ALTERNATE ROUTE: TOWARD EFFICIENT URBAN TRANSPORTATION* 35 n.19 (1998).

<sup>73</sup> Cf. Farkas, *supra* note 63, at 88.

<sup>74</sup> See, e.g., JOBS IN BOSTON, *supra* note 7, at 8–9; U.S. GEN. ACCOUNTING OFFICE, *WELFARE REFORM: TRANSPORTATION’S ROLE IN MOVING FROM WELFARE TO WORK* 5 (1998) [hereinafter *TRANSPORTATION’S ROLE*].

<sup>75</sup> See Blumenberg et al., *supra* note 61, at 2 (noting that “the commutes of welfare recipients by public transportation are complicated by off-peak travel”); Coulton et al., *supra* note 7, at 134.

rants, health care, retail, and domestic service.<sup>76</sup> Researchers project that occupations with non-traditional hours will account for nearly thirty percent of all new job growth through 2005, suggesting that many individuals moving off the welfare rolls will work non-traditional hours.<sup>77</sup>

The interviews conducted for Wilson's 1996 study of inner-city Chicago demonstrate how the logistical difficulties of public transportation impede the job prospects of low-income individuals, at times precluding them from seeking and accepting employment.<sup>78</sup> One twenty-nine-year-old South Side resident commented:

You gotta go out in the suburbs, but I can't get out there. The bus go out there, but you don't want to catch the bus out there, going two hours each ways. If you have to be at work at eight that mean you have to leave for work at six, that mean you have to get up at five to be at work at eight. Then when wintertime come you be in trouble.<sup>79</sup>

Another resident explained how the bus system's limited operating schedule precluded him from accepting a job in the suburbs:

They are most likely hiring in the suburbs. Recently, I think about two years ago, I had a job but they say that I need some transportation and they say that the bus out in the suburbs run at a certain time. So I had to pass up that job because I did not have no transport.<sup>80</sup>

Still another observed, "From what I see, you know, it's hard to find a good job in the inner city 'cause so many people moving, you know, west to the suburbs and out of state . . . Some people turn down jobs because they don't have no way of getting out there."<sup>81</sup>

These types of transportation problems were raised in congressional hearings concerning welfare reform legislation.<sup>82</sup> Since the enactment of

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<sup>76</sup> See Harriet B. Presser & Amy G. Cox, *The Work Schedules of Low-Educated American Women and Welfare Reform*, MONTHLY LAB. REV., Apr. 1997, at 28.

<sup>77</sup> See *id.* at 32.

<sup>78</sup> See WILSON, *supra* note 17, at 38–40. Andrew Farkas's survey of low-income Baltimore residents reflected the same trends: nearly 30% of the respondents indicated that transportation difficulties would preclude them from accepting a job at any one of six major suburban job centers. Farkas, *supra* note 63, at 88–89.

<sup>79</sup> WILSON, *supra* note 17, at 39.

<sup>80</sup> *Id.* at 40.

<sup>81</sup> *Id.*

<sup>82</sup> See *Impact of Welfare Reform on Children and Their Families: Hearing Before the Senate Comm. on Labor and Human Resources*, 104th Cong. 54–55 (1995) (statement of Sarah Cardwell Shuptrine, President, Southern Inst. on Children and Families) ("Lack of transportation was also identified [in the Institute's study on welfare dependency] as a barrier for welfare families who want to work . . . [W]ithout reliable transportation, fami-

this legislation, Congress has recognized the impact of such problems. In 1998, for example, Congress enacted the Job Access and Reverse Commute Grant Program, finding that: "two-thirds of all new jobs are in the suburbs, [but] three-quarters of welfare recipients live in rural areas or central cities"; "even in metropolitan areas with excellent public transportation, less than half of the jobs are accessible by transit"; "many [welfare recipients] will be unable to get to jobs they could otherwise hold"; and "increasing the transit options for low-income workers, especially those who are receiving or have recently received welfare benefits, will increase the likelihood of those workers getting and keeping jobs."<sup>83</sup>

Two post-welfare reform studies support Congress's findings. The first, *Welfare Reform and Access to Jobs in Boston*, cited four factors that prevent Boston's relatively well-developed transit system from providing adequate access to entry-level jobs: (1) many new entry-level employment opportunities are concentrated in the outer suburbs, beyond the reach of existing transit service; (2) other areas of intense economic growth are served only by commuter rail, which often fails to provide direct access to employment centers and is not economically feasible for welfare recipients; (3) in many suburban areas, a substantial gap exists between transit routes and expanding employment areas; (4) even when direct access to suburban jobs is available via existing transit lines, the commutes take too long, involve numerous transfers, or the transit schedules differ from work schedules.<sup>84</sup>

The extent to which these transportation shortcomings impede welfare recipients' access to jobs is staggering. A welfare recipient living in Boston's inner city faces the following scenario: none of the potential employers in high-growth areas for entry level-work can be reached by public transit within thirty minutes; only 10% of all existing entry-level jobs are reachable via public transit within sixty minutes; 33% can be accessed within ninety minutes; and 45% cannot be reached within two hours.<sup>85</sup> These estimates represent the "best-case" scenarios.<sup>86</sup> They fail to consider "impediments such as inadequate hours of transit operation,

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lies on welfare are much less likely to be able to become self sufficient."); *id.* at 230 (prepared statement of Jane L. Ross, Director, Income Security Issues, Health, Educ. and Human Servs. Div., U.S. Gen. Accounting Office) ("Many JOBS participants do not have reliable private transportation available to get their children to the child care provider and then the client to the JOBS component. Likewise, some communities lack the necessary public transportation to get participants where they need to go."); *Contract With America-Welfare Reform: Hearing Before the Subcomm. on Human Resources of the House Comm. on Ways and Means*, 104th Congress 1113 (Feb. 2, 1995) (testimony of welfare recipient Cheri Honkala) ("Meaningful welfare reform has to recognize that without child care, health care and transportation, low income mothers can't get and keep jobs.").

<sup>83</sup> 49 U.S.C. § 5309(a) (1998).

<sup>84</sup> JOBS IN BOSTON, *supra* note 7, at 8.

<sup>85</sup> *Id.* at 8-9.

<sup>86</sup> *Id.* at 9.



infrequent or unreliable transit service, or security concerns of recipients using isolated bus stops or transit stations during off-peak hours.”<sup>87</sup>

The second study, *Housing, Transportation, and Access to Suburban Jobs by Welfare Recipients in the Cleveland Area*, yielded similar results.<sup>88</sup> While the authors concluded that “local labor markets should eventually adjust to the increased labor supply” resulting from welfare reform, they “questioned whether welfare recipients can effectively reach widely disbursed employment locations.”<sup>89</sup> The researchers estimated that approximately 11,000 entry-level job openings are created each year in the Cleveland-Akron labor market.<sup>90</sup> Over 88% of these job openings are expected to occur outside the boundaries of the City of Cleveland, with a large percentage outside Cuyahoga County, in which Cleveland is located.<sup>91</sup> Meanwhile, 55% of area welfare recipients lived in Cleveland, and 72% in Cuyahoga County.<sup>92</sup> Even the most optimistic estimates of commute times facing Cleveland recipients seeking suburban employment—calculated for rush hour when service is most frequent and transfer times shortest—are discouraging. Only 929 entry-level jobs are expected to be available each year within a thirty-minute bus commute from one Cleveland neighborhood with a high concentration of welfare recipients.<sup>93</sup> “Inner-city residents can reach only 8 percent to 15 percent of the job openings within an average length commute on public transit.”<sup>94</sup> Furthermore, these “optimistic” estimates likely are unattainable, particularly because the firms responsible for job creation are often dispersed and not amenable to large-vehicle modes of transportation, forcing passengers to walk long distances between jobs and transit stops.<sup>95</sup> Given these constraints, the study’s authors “find transportation barriers that are difficult to overcome using traditional mass transit.”<sup>96</sup>

### C. The Hardest Cases: Women and Transportation

Even these pessimistic findings may underestimate the transportation barriers faced by individuals comprising the largest group of welfare recipients—single mothers.<sup>97</sup> Academic studies of women’s labor force participation are characterized by one “remarkably consistent finding”: although commute distances have been increasing generally, “women

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<sup>87</sup> *Id.*

<sup>88</sup> See Coulton et al., *supra* note 7, at 123.

<sup>89</sup> *Id.* at 124.

<sup>90</sup> *Id.* at 132.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 131.

<sup>93</sup> *Id.* at 134.

<sup>94</sup> *Id.* at 135.

<sup>95</sup> *Id.* at 143.

<sup>96</sup> *Id.*

<sup>97</sup> See JOBS IN BOSTON, *supra* note 7, at 2–5.

work closer to home than do men.”<sup>98</sup> To understand whether it is possible to structure transportation services so as to increase the probability that welfare reform will succeed, it is therefore necessary to understand why women’s commutes are shorter than men’s. Scholars have set forth a number of possible explanations. Some argue that women’s shorter commutes are attributable to the fact that they earn lower wages, on average, than men, making long commutes economically irrational.<sup>99</sup> Others posit that women’s shorter commutes are attributable to labor force characteristics—women work part-time<sup>100</sup> and pursue different (and less prestigious) occupations than men.<sup>101</sup> Still others argue that limitations on mobility resulting from women’s higher rates of reliance on public transportation explain work-trip differences.<sup>102</sup>

The gender differences in commuting patterns, however, are most frequently linked to the fact that women continue to bear the lion’s share of household responsibilities.<sup>103</sup> For example, one 1977 study found that women with the most demanding home roles (defined by marital status and ages of children) spent the least time traveling to work.<sup>104</sup> Many women, therefore, may find it impossible to fulfill all of their non-work responsibilities and devote a significant portion of the day to commuting.

Recent empirical research provides additional support for the domestic responsibility explanation. Not only do women make more trips per day than men,<sup>105</sup> but women’s commutes are more likely to include a complex “trip chain” that combines work and non-work responsibilities.<sup>106</sup> The number of non-work-related “personal business” trips, including visits to doctors, banks, shopping centers, and day-care centers, has risen sharply for women.<sup>107</sup> Variation in the number and purpose of trips, however, does not hold across all age groups. Men and women tend to exhibit similar travel patterns before age twenty and after age fifty.<sup>108</sup>

<sup>98</sup> Susan Hanson & Ibipo Johnston, *Gender Differences in Work Trip Length: Explanations and Implications*, 6 URB. GEOGRAPHY 193, 193 (1985) (collecting studies).

<sup>99</sup> See, e.g., Janice F. Madden, *Why Women Work Closer to Home*, 18 URB. STUDIES 181, 182 (1981).

<sup>100</sup> See *id.*

<sup>101</sup> See Hanson & Johnston, *supra* note 98, at 195–96 (collecting studies).

<sup>102</sup> See *id.* at 197 (collecting studies).

<sup>103</sup> See Julia A. Ericksen, *An Analysis of the Journey to Work for Women*, 24 Soc. PROBS. 428, 430–31 (1977); Hanson & Johnston, *supra* note 98, at 197 (collecting studies); Madden, *supra* note 99, at 182.

<sup>104</sup> Ericksen, *supra* note 103, at 433.

<sup>105</sup> See PISARSKI, *supra* note 49, at 41 (finding that in 1990, men made 3.04 trips per day and women made 3.13; in 1983, men and women made approximately the same number of trips per day, 2.88).

<sup>106</sup> MARTHA BIANCO & CATHERINE LAWSON, U.S. DEP’T OF TRANSP., TRIP-CHAINING, CHILDCARE, AND PERSONAL SAFETY: CRITICAL ISSUES IN WOMEN’S TRAVEL BEHAVIOR 124 (1999) (citing JAMES STRATHMAN & KENNETH DUEKER, UNDERSTANDING TRIP CHAINING: 1990 NPTS SUBJECT AREA REPORT (1994)).

<sup>107</sup> These personal business trips rose from 17% of all trips in 1983 to over 23% in 1990. PISARSKI, *supra* note 49, at 43.

<sup>108</sup> *Id.* at 42.

The travel pattern diverges only during women's child-rearing years, suggesting that the increase in number of trips is largely attributable to household responsibilities.<sup>109</sup> Gender differences in commute patterns are sharpest for households with children ages six to fifteen.<sup>110</sup> One study of the travel patterns of single mothers in Brentwood, Tennessee, found that ten percent of all non-work trips incorporated into morning commutes related to childcare.<sup>111</sup>

Household responsibilities affect commuting patterns in another important way—women with young children are more likely to work during non-traditional hours. This trend is especially pronounced for low-income women. One recent study found that “only slightly more than one-half (56.7 percent) of low-educated employed mothers work a standard, fixed daytime schedule during weekdays only.”<sup>112</sup> Researchers found that women working non-standard hours did so to balance the competing demands of work and family.<sup>113</sup> Furthermore, the probability of working during non-standard hours increased with the number of children in the household.<sup>114</sup> Women with very young children were especially likely to cite childcare concerns as the main reason for working non-standard hours.<sup>115</sup>

These gender differences make quality, flexible transportation imperative to welfare reform, especially because the low-income single mothers that make up the bulk of current welfare caseloads take more and longer trips than married and higher-income mothers.<sup>116</sup> For these women, transportation that accommodates complex “trip chaining” is a necessary prerequisite to entering the labor force.<sup>117</sup> Not surprisingly, working women in general are becoming increasingly dependent upon automobiles.<sup>118</sup> As Sandra Rosenbloom has observed, “working women with children are particularly dependent on the car because it is the

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<sup>109</sup> *Id.*

<sup>110</sup> See Mohammad M. Hamed & Fred L. Mannering, *Modeling Travelers' Postwork Activity Involvement: Toward a New Methodology*, 27 TRANSP. SCI. 381, 388 (1993) (finding that men are much more likely to return directly home from work than women). But see Hanson & Johnston, *supra* note 98, at 206 (statistical chart).

<sup>111</sup> See BIANCO & LAWSON, *supra* note 106, at 126 (citing D. Davidson, *Impact of Suburban Employee Trip Chaining on Transportation Demand Management*, 1321 TRANSP. RES. REC. 82–89 (1991)).

<sup>112</sup> Presser & Cox, *supra* note 76, at 27.

<sup>113</sup> See *id.* at 28–29.

<sup>114</sup> *Id.* at 29–30.

<sup>115</sup> *Id.* As would be expected, the most cited reason given by low-skilled working women for working non-standard hours is to satisfy the “requirement[s] of the job.” *Id.* at 29.

<sup>116</sup> See JOBS IN BOSTON, *supra* note 7, at 3 (discussing research).

<sup>117</sup> See BIANCO & LAWSON, *supra* note 106, at 125; McKnight, *supra* note 69, at 5.

<sup>118</sup> The number of miles driven by women increased 76% between 1969 and 1990 (compared with a 46% increase for men during the same period). The distance driven more than doubled among women 16 to 34 years of age. JOBS IN BOSTON, *supra* note 7, at 3.

best—and perhaps only—way to balance the child care and domestic responsibilities they retain when they enter the paid labor force.”<sup>119</sup>

Commuting by automobile, however, is simply not an option for many welfare recipients. Indeed, women as a whole continue to be much more dependent upon public transportation than men.<sup>120</sup> Low-income women without cars face the impediments confronted by all public-transportation-reliant individuals. Unfortunately, these impediments may prove too much of a burden, precluding many low-income, single mothers from fulfilling both their domestic and work responsibilities.

The need to engage in “trip chaining,” for example, complicates the transfer and scheduling difficulties inherent in any public transportation commute. A transit-reliant mother must first negotiate the public transportation network to drop her child off at school or the daycare center. She may have to walk some distance between the transit stop and the daycare center (if it can be reached at all by public transit). After seeing her child safely off, she must, for all practical purposes, start over, renegotiating the network from the daycare center to work.<sup>121</sup> These intermediate stops increase not only the duration and cost of a commute, they also increase the probability of a delay occurring during one of the intermediate transfers. Furthermore, a working mother may find that transit schedules make it impossible for her to meet the opening and closing hours of daycare centers. Even when a bus is scheduled to arrive prior to closing, she may be unable to risk a delay.<sup>122</sup> Single mothers who work during non-standard hours will also run headlong into the limited operating schedules of most public transportation networks. Structuring a commute around the sparse off-peak schedule of most public transportation networks is frustrating for all transit-reliant individuals. Single mothers with young children, however, may find it impossible.<sup>123</sup>

Safety concerns may also cause women, particularly those who work during non-traditional hours, to shy away from public transportation. Although research on the relative safety of public transportation is limited, several patterns emerge from the studies that have been conducted. First, many individuals choose not to rely upon public transportation because of concerns about safety.<sup>124</sup> Women are more likely to be victim-

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<sup>119</sup> SANDRA ROSENBLOOM, U.S. DEP'T OF TRANSP., *TRAVEL BY WOMEN: DEMOGRAPHIC SPECIAL REPORTS* 48 (1995).

<sup>120</sup> Hanson & Johnston, *supra* note 98, at 197, 208.

<sup>121</sup> See McKnight, *supra* note 69, at 5.

<sup>122</sup> See *id.* at 6.

<sup>123</sup> See *Impact of Welfare Reform on Children and Their Families: Hearings Before the Senate Comm. on Labor and Human Resources*, *supra* note 82, at 230 (prepared statement of Jane L. Ross).

<sup>124</sup> See Gerald L. Ingalls et al., *Public Fear of Crime and Its Role in Bus Transit Use*, 1433 *TRANSP. RES. REC.* 201 (1994); BIANCO & LAWSON, *supra* note 106, at 127 (discussing a study finding that 46.8% of potential riders perceived waiting at a bus stop as unsafe, and 44.4% expressed apprehension about transferring at a bus terminal).

ized on public transit than men,<sup>125</sup> and a larger percentage of women perceive risks to their safety.<sup>126</sup> Women are also more likely to respond to this perceived threat to their personal safety by not putting themselves in the way of danger, even if this means forgoing travel altogether.<sup>127</sup> Second, public transportation customers face the greatest danger while waiting at, and walking to and from, transit stops.<sup>128</sup> Due to the sporadic nature of off-peak transit operations, working the late shift exposes women to both of these dangers. Women who work late often must wait for a bus at a deserted bus stop and face long, solitary walks between their place of employment and the bus stop, and then another long walk between the bus stop and their homes.<sup>129</sup> Finally, although most crimes on public transit are committed during peak hours, the rates of occurrence are disproportionately high during off-peak, evening hours.<sup>130</sup>

## II. CURRENT EFFORTS TO ADDRESS THE "TRANSPORTATION MISMATCH"

Officials charged with implementing welfare reform are struggling to address the transportation problems faced by welfare recipients. In a 1997 survey conducted by the United States Conference of Mayors of their member cities, eighty-four percent of the respondents cited transportation as an impediment to moving recipients into work.<sup>131</sup> Seventy-five percent of the respondents further reported, however, that they have programs under way or in the planning stages that address welfare recipients' transportation problems.<sup>132</sup>

### A. Federal Efforts

The federal government has tackled transportation problems primarily by providing financial assistance to support state and local efforts. States are generally free to spend the \$16.5 billion that the federal gov-

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<sup>125</sup> See BIANCO & LAWSON, *supra* note 106, at 126 (discussing study by Levine and Wachs). *But see* McKnight, *supra* note 69, at 7.

<sup>126</sup> In one survey of rush-hour subway riders in New York City, "26 percent of women and 11 percent of men indicated that they were very worried about crime"; the reported level of fear increased to 52% of women and 28% of men after 8 p.m. McKnight, *supra* note 69, at 6.

<sup>127</sup> See BIANCO & LAWSON, *supra* note 106, at 127 (discussing study by Lynch and Atkins); McKnight, *supra* note 69, at 7.

<sup>128</sup> See McKnight, *supra* note 69, at 11.

<sup>129</sup> See *id.*

<sup>130</sup> See BIANCO & LAWSON, *supra* note 106, at 127 (discussing study by Pearlstein and Wachs).

<sup>131</sup> Press Release, U.S. Conference of Mayors, Mayors' Welfare Reform Survey Finds Problems With Job Availability, Transportation to Jobs, Child Care And Housing Needed By Welfare Clients (Nov. 21, 1997), at [http://www.usmayors.org/uscm/news/press\\_releases/press\\_archive.asp?doc\\_id=106](http://www.usmayors.org/uscm/news/press_releases/press_archive.asp?doc_id=106).

<sup>132</sup> *Id.*

ernment disperses annually through the new federal welfare program, Temporary Assistance to Needy Families ("TANF"), on support services, including transportation, so long as the expenditures target welfare recipients themselves and do not supplement existing services that benefit the general public.<sup>133</sup> Shortly after Congress enacted the Welfare Reform Act, it also made additional funds available to states and municipalities for support services, such as transportation, in the Balanced Budget Act of 1997, which created the "Welfare-to-Work" program.<sup>134</sup> The Welfare-to-Work program was a response to the growing concern that "welfare recipients who have the least skills, education, employment experience and who live within high poverty areas may need additional assistance to obtain lasting jobs and become self-sufficient."<sup>135</sup> The Act appropriates a total of three billion dollars to augment state and local efforts to create job opportunities for the hardest-to-employ recipients, namely, those who have received welfare for at least thirty months, or are within twelve months of exhausting the time limits, and those who face certain statutorily defined barriers to employment.<sup>136</sup> Welfare-to-Work grants may be spent on transportation, but only to benefit the individuals targeted by the program, and then only for transportation services for individuals participating in a Welfare-to-Work activity, such as a job-training program.<sup>137</sup>

In 1998, Congress also created the Job Access and Reverse Commute Grant Program as a specific response to concerns that "many [welfare recipients] will be unable to get to jobs they could otherwise hold" because the dispersed nature of entry-level jobs makes them inaccessible by public transportation.<sup>138</sup> Through the program, which is administered by the Department of Transportation, Congress authorized \$150 million per year to assist states and localities in developing transportation services to connect welfare recipients and other low-income persons to jobs and employment-related services.<sup>139</sup>

Several pre-welfare reform programs also attempt to address the importance of adequate transportation to welfare recipients. The Federal Transit Administration has been funding various experimental projects

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<sup>133</sup> Personal Responsibility & Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified at 42 U.S.C. § 602(a)(1)(A) (2000)).

<sup>134</sup> Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (codified as amended at 42 U.S.C. § 603(a)(5)(C)(i) (2000)).

<sup>135</sup> Welfare-to-Work (WtW) Grants, 62 Fed. Reg. 61,588 (Nov. 18, 1997) (codified at 20 C.F.R. pt. 645).

<sup>136</sup> See U.S. GEN. ACCOUNTING OFFICE, WELFARE REFORM: IMPLEMENTING DOT'S ACCESS TO JOBS PROGRAM 3-4 (1998) [hereinafter ACCESS TO JOBS].

<sup>137</sup> 47 U.S.C. § 603 (1994).

<sup>138</sup> 49 U.S.C. § 5309(a) (1998).

<sup>139</sup> See ACCESS TO JOBS, *supra* note 136, at 1, 4. As with TANF and Welfare-to-Work funds, the Job Access program includes a cost-sharing requirement. Grant funds awarded for a project may not exceed 50% of the project's total cost. Funds from other federal programs, however, may be expended to meet the local financial responsibility. See *id.* at 4.

that tackle transportation problems.<sup>140</sup> The largest of these projects, JOBLINKS—a \$3.5 million project administered by the Community Transportation Association of America—provides funds to transport recipients to jobs or employment training and to evaluate which types of transportation services are most effective in helping welfare recipients get to work.<sup>141</sup> The Department of Housing and Urban Development currently administers a four-year research demonstration program called “Bridges to Work.”<sup>142</sup> The program, which provides employment, transportation, and support services to participants in five cities,<sup>143</sup> responds to the problems identified by spatial mismatch proponents. It is designed to determine whether the coordinated provision of jobs, transportation, and support services can overcome the geographic separation of jobs and welfare recipients.<sup>144</sup> Employers hiring workers through the program remain cautiously optimistic. One St. Louis employer observes, “We all have obstacles to working . . . . For some people, just getting to work is the obstacle. I feel like this program helps them become hurdlers.”<sup>145</sup> Still, this employer expresses doubts; he has found in the past that employees with long commutes often quit when the distances become too difficult to manage.<sup>146</sup>

### B. Current State and Local Efforts

Much to their credit, almost immediately after the enactment of welfare reform legislation, state and local government agencies charged with implementing the new “devolved” federal welfare program began to ex-

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According to an FTA official, the agency is supporting welfare-to-work initiatives by funding demonstration projects, working with state and local partners to encourage the development of collaborative transportation plans, providing states and localities with technical assistance, and developing a program that would increase the financial resources available for welfare initiatives.

TRANSPORTATION’S ROLE, *supra* note 74, at 7.

<sup>141</sup> “As of March 1998, JOBLINKS had funded 16 projects . . . in . . . 12 states” and provided smaller grants to states and local governments “to help people obtain jobs or attend employment training.” *Id.* at 7–8.

<sup>142</sup> U.S. DEP’T OF HOUSING & URBAN DEV., FACT SHEET: BRIDGES TO WORK DEMONSTRATION LINKING INNER [sic] CITY RESIDENTS TO METROPOLITAN WIDE OPPORTUNITIES, at <http://www.huduser.org/publications/povsoc/btw/fact.html> (last modified Apr. 27, 2000); Oscar Avila, *Program Links Jobs, Workers*, KAN. CITY STAR, Aug. 15, 1997, at A1.

<sup>143</sup> See ACCESS TO JOBS, *supra* note 136, at 9.

<sup>144</sup> In St. Louis, for example, Bridges to Work contracts with the Red Cross to provide a van service from residential neighborhoods to central bus depots. There, participants take a 40-minute bus ride to jobs arranged for them in suburban Chesterfield, Missouri. Participants initially take advantage of the service free of charge. After two months, they pay a subsidized rate of \$37 per month. A four-year \$4 million federal grant picks up the remainder of the tab. Avila, *supra* note 142.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

plore ways to address the transportation difficulties that plague many low-income Americans. Since that time, these agencies have taken advantage of the various federal resources (supplemented by their own funds) to implement programs designed to help welfare recipients get to work.<sup>147</sup>

Many state and local governments now make public transportation available to welfare recipients either free of charge or at reduced rates for a limited time period.<sup>148</sup> Some jurisdictions have begun to add new bus routes, including routes specifically designed to address the needs of reverse commuters<sup>149</sup> or have incorporated smaller, more flexible, minibuses, enabling them to expand service to include lower-density routes.<sup>150</sup> Some social service agencies have contracted with private companies to provide commuter ride services for welfare recipients.<sup>151</sup> In addition, other agencies operate their own services tailored specifically to meet the needs of welfare recipients.<sup>152</sup> Recognizing the inherent limitations of public transportation, a number of jurisdictions also have undertaken efforts to make cars more accessible to welfare recipients.<sup>153</sup> The boldest of

<sup>147</sup> For a complete list of state and local programs designed to address "transportation mismatch" problems, see COMMUNITY TRANSP. ASS'N OF AMERICA, *TRANSPORTATION AND WELFARE REFORM: STATES ON THE MOVE* §§ III, IV, V [hereinafter *STATES ON THE MOVE*] at <http://www.ctaa.org/ntrc/atj/pubs/states-move> (last visited Dec. 6, 2000).

<sup>148</sup> This is the case in Detroit, where welfare recipients who enter the workforce are permitted to commute to work, free of charge, on public buses for one month. *Id.* § IV. New Jersey has a similar program, "Get a Job, Get a Ride," which provides one month of free public transportation to any recipient exiting welfare for employment. *Id.* Delaware's "Get A Job\*Get a Ride" program provides free public transportation for recipients during their first 30 days of work and also provides recipients with information about transit schedules. *Id.* § III. Illinois reimburses recipients for the cost of public transit passes, up to \$88 per month. *Id.* In Tennessee, recipients receive \$5 per day to cover the cost of public transportation (or a \$5 voucher for gas if no public transportation is available). *Id.*

<sup>149</sup> See generally FED. HWY. ADMIN., U.S. DEP'T OF TRANSP., *JOB ACCESS: MOVING TOWARD A SOLUTION*, at <http://www.fhwa.dot.gov/reports/challeng.htm> (last visited Dec. 6, 2000).

<sup>150</sup> For example, rural Highland County, Ohio, contracts with a school district to provide transportation for welfare recipients during hours when school buses are otherwise idle. See *STATES ON THE MOVE*, *supra* note 147, § IV. Arkansas has implemented a similar program. See *id.* § III. Still other innovative programs include the New Jersey Department of Transportation's "Transit Training" program, which educates welfare recipients about how to use the State's public transportation systems. See *id.* § IV. Virginia has expanded the "training" concept even further, providing employers with a "Reality Check" program, which explains the frustrations faced by individuals who must negotiate spotty public transportation in order to get to work. *Id.*

<sup>151</sup> See *id.* § IV.

<sup>152</sup> In Detroit, for example, the agency charged with providing public transportation not only provides computerized scheduling of transportation services—essentially acting as welfare recipients' commuting travel agent—it further offers to transport welfare recipients, free of charge, from a bus stop to their place of employment. *Id.* § IV. Fairfax County, Virginia operates its own van-pool system, which provides daily rides for about 245 working welfare recipients; the county also provides free taxi service to accommodate recipients who work off-peak hours. Eric Lipton, *Fairfax Offers Welfare Recipients Rides to Work*, WASH. POST, Nov. 25, 1997, at B8.

<sup>153</sup> See *STATES ON THE MOVE*, *supra* note 147, § III.



these programs actually provide welfare recipients with a free car.<sup>154</sup> In other jurisdictions, welfare recipients are given the opportunity to purchase cars with low-interest or interest-free loans.<sup>155</sup> Many states have taken more modest steps like increasing the welfare-eligibility asset limit to permit recipients to purchase a car and providing recipients with mileage allowances or money for gas and/or repairs.<sup>156</sup> Finally, some local governments have begun to recruit volunteer drivers to transport recipients to and from job training programs and work.<sup>157</sup>

### C. Policy Limitations

Each of the federal, state, and local policies discussed above has major limitations, which virtually ensure that inadequate transportation will continue to impede the efforts of individuals struggling to gain economic self-sufficiency. For example, while providing public transportation for free or reduced rates decreases the cost of commuting, it does nothing to alleviate any of the systemic problems with public transportation. Free transit passes serve no purpose if bus routes do not reach new suburban job centers. They also fail to make women's "trip-chains" easier, shorten lengthy commutes, or eliminate the need to make multiple transfers. Furthermore, free passes cannot help welfare recipients who

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<sup>154</sup> See generally Monica Oui Frazier, Note, *License to Drive: Getting Welfare Recipients from the Cities to the Jobs*, 7 GEO. J. ON POVERTY L. & POL'Y 1 (2000) (discussing car-donation programs and advocating widespread adoption of policies matching recipients with cars). Fairfax County, Virginia began to provide recipients with used cars after recognizing that public transportation was unable to meet many recipients' transportation needs. Alice Reid, *On the Road from Welfare to Work; Pairing Clients and Cars, Fairfax Puts Jobs Within Reach*, WASH. POST, Feb. 2, 1999, at A1. Similarly, Nebraska will purchase a vehicle, worth up to \$2,000, for a recipient who becomes employed; the state also provides insurance for three months as well as making an additional \$500 available for taxes, licensing, and registration. STATES ON THE MOVE, *supra* note 147, § III. Columbia County, Pennsylvania teamed up with the local United Way to spearhead a project linking welfare recipients needing transportation to work with donated cars. *Id.* § IV. The State of Colorado coordinates a program, "Wrecks to Rides," which encourages people to donate cars to Goodwill. The cars are taken to high schools where students repair them for use by welfare recipients. *Id.* § III. In central Massachusetts, Lutheran Social Services operates a program—funded in part by a state grant—that pairs recipients with used, reconditioned vehicles. Bob Datz, *On the Road to Independence*, WORCESTER TELEGRAM & GAZETTE, July 8, 1999, at A1.

<sup>155</sup> Georgia's "Peach on Wheels" program works with used car dealers to enable recipients to purchase salvaged or auctioned cars with no interest or low-interest loans. See STATES ON THE MOVE, *supra* note 147, at § III. Tennessee's "First Wheels" project sells donated cars to recipients without interest. *Id.* Ventura County, California has proposed buying used public and private vehicle fleets and then selling them below market value to recipients through low-interest loans. Hilary E. MacGregor, *Plan Providing Low-Cost Car Loans for Needy Gets Green Light*, L.A. TIMES, Sept. 5, 1997, at B1.

<sup>156</sup> See STATES ON THE MOVE, *supra* note 147, § 3.

<sup>157</sup> See *id.*

face bus service that is sporadic and unreliable or that stops operating before the end of a late shift.<sup>158</sup>

The commuter van pools that several jurisdictions have established to serve individuals making the transition from welfare to the workforce address some of these policy limitations by tailoring services expressly to the needs of their clientele. These services promise to provide a much needed, immediate solution for those workers who benefit from them by virtually eliminating the transportation impediment to work. These commuter van pools, however, offer only a temporary and limited solution. Just as public transit authorities cannot hope to provide bus service to every conceivable destination, welfare reform agencies cannot provide individually tailored van service for every low-income worker who needs it.

Policies that help recipients secure access to cars represent a more permanent solution. Some of these initiatives, such as increasing the automobile asset limit for welfare eligibility, address glaring deficiencies in pre-welfare reform policies. Others, such as programs providing recipients with donated cars, offer tremendous relief for the fortunate beneficiaries. It is unlikely, however, that car-donation programs will provide widespread relief. Since there are 7.3 million welfare recipients,<sup>159</sup> it may not be feasible to provide all in need of transportation with a reliable automobile.

Most of these efforts share an additional flaw—they target only welfare recipients. Once the transition from welfare to work has been successful, *former* recipients are no longer eligible for the service. They find themselves back at square one with respect to transportation. Furthermore, programs that target welfare recipients provide no relief for individuals who may be barely hanging on to economic self-sufficiency. The loss of a reliable ride to work—a broken-down car or the dissolution of a car pool—could mean financial ruin. The policies addressed above do nothing to avoid these catastrophes. The urban poor benefit from those initiatives only after disaster lands them on welfare.

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<sup>158</sup> Efforts to augment current public transportation services attempt to address these concerns. The decision of several jurisdictions to introduce new "reverse commuting" bus routes is a particularly promising development. Public transportation authorities can address an acute need for new service to a large employment center—a shopping mall or industrial park, for instance. However, at least two factors—limited public resources and the fixed-route model of public transportation—limit the effectiveness of these efforts. As long as resources remain finite and buses are constrained to fixed routes, they can never provide transportation to every dispersed suburban job destination. See COMMUNITY TRANSP. ASS'N OF AMERICA, *WELFARE TO WORK*, at <http://www.ctaa.org/ntrc/atj/pubs/innovative/innov5.shtml> (last visited Dec. 13, 2000).

<sup>159</sup> See *Group Questions Success of Overhaul*, FACTS ON FILE WORLD NEWS DIG., Sept. 30, 1999, at 708E3.

## III. AN ALTERNATIVE APPROACH

In much of the world, especially in developing nations, low-cost jitneys operated by private entrepreneurs fill in transportation gaps like those that American policymakers struggle to address. "Jitney" services combine characteristics of bus and taxi services: like buses, jitneys provide shared-ride transportation service for unrelated passengers; like taxis, they accept street hails and frequently deviate from their usual routes.<sup>160</sup> In general, jitney service is provided in vans or minibuses and is operated by private entrepreneurs. After studying the operation of jitneys in six cities abroad, one scholar summarized their appeal as follows:

They charge relatively low fares and provide wide coverage across a city, often serving poor areas that get no other service. Their operations are flexible so they can add service at peak times and quickly cover new neighborhoods. Their small size and cheap labor enables them to profitably provide frequent service in smaller neighborhoods and along narrow streets, as well as work the main thoroughfares. With fewer passengers, they often make fewer stops and faster time.<sup>161</sup>

Despite these substantial benefits, jitneys are virtually non-existent in the United States. As a 1984 Federal Trade Commission report found, "most [American] jurisdictions prohibit shared-ride service, including . . . jitney service."<sup>162</sup>

With few exceptions, most jurisdictions have taken a government-directed, command-and-control approach to addressing the transportation woes of America's inner-city poor. Policymakers have overlooked an important non-traditional solution to these transportation problems—namely, amending the legal restrictions that preclude private entrepreneurs from providing unsubsidized jitney services to low-income customers who desperately need them. This legal reform could serve two important purposes: historical and current experience demonstrate that jitney services not only take people to work, they also put people to work.<sup>163</sup> Because

<sup>160</sup> See Isaac K. Takyi, *An Evaluation of Jitney Systems in Developing Countries*, 44 TRANSP. Q. 163, 170 (1990) ("The archetypical urban jitney system consists of a constellation of loosely regulated owner-operated collective vehicles following more or less fixed-routes with some deviations as custom, traffic, and hour permit.").

<sup>161</sup> *Id.* at 171.

<sup>162</sup> MARK W. FRANKENA & PAUL A. PAULTER, FED. TRADE COMM'N, AN ECONOMIC ANALYSIS OF TAXICAB REGULATION 25 (1984).

<sup>163</sup> I am certainly not the first to suggest that relaxing the nearly ubiquitous restrictions on jitney services might help remedy the transportation problems that plague the poor. See *id.* at 155 (finding that prohibitions on jitney operations lack any "economic justification" and are part of a regulatory system that "impose[s] a disproportionate burden on low income people"); Glenn Garvin, *Flouting the Law, Serving the Poor*, REASON, June/July 1985, at 29; Sandi Rosenbloom, *Taxis, Jitneys & Poverty*, TRANS-ACTION, Feb. 1970, at 47;

jitneys are essentially illegal in this country, the arguments in favor of this path have tended to rely upon academic speculation. In the discussion that follows, I attempt to draw upon more concrete evidence—both historical and contemporary—to support the proposition that, if permitted to operate, jitneys could provide a safe, flexible, and reliable ride to work for former welfare recipients.

### A. America's Historical Experience with Jitneys

Americans were not always strangers to jitney services. During a brief period around the turn of the century, jitneys flourished in nearly every major American city. The remarkable American jitney phenomenon allegedly began in Los Angeles on July 1, 1914, when L.P. Draper—having ascertained that his action was legal, because he held a chauffeur's license—picked up a passenger and transported him a short distance for a nickel.<sup>164</sup> The movement gained momentum rapidly, and this novel form of transportation exploded onto the American scene. By early 1915, jitneys began to appear in most American cities, literally sweeping the nation in a matter of months.<sup>165</sup> During a two-week period in Kansas City, the number of jitneys jumped from 0 to 200 cars carrying nearly 25,000 passengers a day. Two weeks later, the number of jitney patrons reached 45,000–50,000 per day.<sup>166</sup> At the peak of the phenomenon in 1915, more than 60,000 jitneys were operating in the United States.<sup>167</sup>

The instant popularity of jitneys was largely attributable to public dissatisfaction with the quality of service provided by urban street car companies.<sup>168</sup> In 1914, Americans depended almost entirely on the electric street railways for urban public transportation.<sup>169</sup> These monopolists had a reputation for arrogance and poor customer service.<sup>170</sup> From a customer's perspective, jitneys had significant advantages over street cars,

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McKnight, *supra* note 69, at 12 (1994) (suggesting that women's transportation problems could be addressed by:

vans operate[d] similar . . . to a bus but . . . provid[ing] more personalized service, frequently deviating from main streets to drop people directly at their [main] destinations . . . . In larger cities, these services could be encouraged by a change in policy and in regulations that prohibit small, informal transportation services from competing with publicly supported transit monopolies.).

<sup>164</sup> See Ross D. Eckert & George W. Hilton, *The Jitneys*, 15 J.L. & ECON. 293, 294–95 (1972). Although the source of the term is disputed, one possibility is that "jitney" meant nickel—the cost of the service—in the slang of the period. See *id.* at 294.

<sup>165</sup> See *id.* at 295.

<sup>166</sup> Carlos A. Schwantes, *The West Adapts the Automobile: Technology, Unemployment, and the Jitney Phenomenon of 1914–1917*, 16 W. HIST. Q. 307, 308 (1985).

<sup>167</sup> *Id.* at 309; see also Eckert & Hilton, *supra* note 164, at 295.

<sup>168</sup> See Eckert & Hilton, *supra* note 164, at 296.

<sup>169</sup> See *id.* at 293.

<sup>170</sup> Schwantes, *supra* note 166, at 309–10.

including, most importantly, speed. As technological advances enabled street railways to evolve from relatively small trolleys into longer and heavier streetcars, companies sacrificed speed for efficiency.<sup>171</sup> Bigger cars carried more passengers, requiring more and longer stops to pick up and discharge passengers.<sup>172</sup>

Meanwhile, carrying just four to five passengers (usually in a Ford Model T), jitneys were 150% to 200% faster than streetcars.<sup>173</sup> Large streetcars ran less frequently, making their frustrated passengers ripe for the picking by jitneys, which typically picked up passengers every two to six minutes.<sup>174</sup> Furthermore, jitneys' freedom from the rails gave them greater flexibility than the streetcars. A driver "did not customarily choose a destination until he picked up his first passenger. He would then post . . . that passenger's destination on his windshield and pick up additional passengers en route."<sup>175</sup> Drivers were also known to deliver passengers directly to their doors—"usually at a rate of two passengers for a quarter," although door-to-door service was provided free of charge in some cities.<sup>176</sup>

In light of the public's discontent with street cars, it is not surprising that jitneys quickly developed a loyal customer base. One jitney enthusiast proclaimed the service to be a "'new phase in the old struggle between class and mass. On one side is capital, represented by the traction interests, and on the other side are the jitney owners and their patrons.'"<sup>177</sup> A pro-jitney editorialist penned the following jingle:

There was a little man  
Had a wooden leg;  
Hadt'n't any money,  
Didn't want to beg.  
So he took four spools,  
And an old tin can,  
Called it jitney  
And the blamed thing ran.<sup>178</sup>

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<sup>171</sup> *Id.* at 311.

<sup>172</sup> *Id.*

<sup>173</sup> Eckert & Hilton, *supra* note 164, at 296, 301.

<sup>174</sup> See Schwantes, *supra* note 166, at 311-12.

<sup>175</sup> Eckert & Hilton, *supra* note 164, at 296 (citing *Jitneys at San Antonio*, 45 ELEC. RY. J. 1197 (1915)).

<sup>176</sup> See *id.* The jitneys also benefited from the decentralized nature of the industry. While jitney operators had associations in most cities, the vast majority of operators were individuals. "Collusive organization of the industry was difficult in part because so many operators provided service only in rush hours or on some other part-time basis. Some men drove as jitney operators for one or two hours before or after work, or both." *Id.* at 297. In some cities, a majority of jitneys probably made one or two round trips per day. See *id.*

<sup>177</sup> Schwantes, *supra* note 166, at 311 (quoting JOHN ANDERSON MILLER, FARES PLEASE! FROM HORSE-CARS TO STREAMLINERS 150 (1941)).

<sup>178</sup> *Id.* (quoting *Getting Rid of the Rails*, INDEP., May 31, 1915, at 342).

The enthusiastic newsman concluded, "It's bound to run. Nothing can stop the jitney now, no corporation, no legislation. The era of extortion and of corruption is over."<sup>179</sup>

The jitney phenomenon was also spurred on by outside economic forces. "By late 1914 the depression that began the previous year had idled an estimated one million workers in the United States . . . . [U]nemployment was highest in cities of the West Coast, ranging from 20% . . . in Portland, to 16% in San Francisco, 13% in Seattle, and 11% in Los Angeles."<sup>180</sup> Many unemployed men were eager to capitalize on the public desire for an alternative to the streetcars, especially when operating a jitney meant food on the table. During hearings on jitney regulations in Kansas City, for example, several women testified that, thanks to jitneys, their previously unemployed husbands were "'independent and doing a good business.'"<sup>181</sup>

The astonishing success of jitneys did not go unnoticed by streetcar operators. While reliable figures for streetcar losses do not exist, the industry was undoubtedly dealt a severe blow, particularly in western cities where companies had recently invested large amounts of capital to extend lines to new suburbs.<sup>182</sup> One journalist observed that streetcar conductors, "looked as if they were running funeral cars, with few mourners."<sup>183</sup> The Electric Railway Journal referred to jitneys as "a menace," "a malignant growth," and "this Frankenstein of transportation."<sup>184</sup> In some cities, streetcar companies were forced to field their own fleets of jitneys as a defensive mechanism.<sup>185</sup>

At first, street railway companies took the position that jitneys were uneconomical and therefore doomed.<sup>186</sup> When the number of jitneys continued to skyrocket, streetcar executives argued that the drivers "were being swindled into a losing proposition by big business and deceitful

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 313–14.

<sup>181</sup> *Id.* at 314 (quoting OREGON VOTER, May 22, 1915, at 107). Furthermore, men with a desire to work had, for the first time in history, inexpensive motorized transportation at their disposal. Ford introduced mass production of automobiles in 1913, and by 1916 the price of a Model T had fallen from \$550 to \$360. *Id.* at 313. "Ford sold more than one-third of a million Model T's in 1914 alone. The popularity of the Fords created a used car glut that lasted until the jitney boom emptied dealers' lots." *Id.* The public desire for a mass transportation alternative meshed nicely with the advent of inexpensive, mass-produced automobiles and the availability of a large pool of unemployed workers eager for gainful employment. *See id.* at 309.

<sup>182</sup> *See id.* at 315. By late 1914, "Los Angeles Railways was losing \$600 per day in revenue, had laid off 84 motormen and conductors and withdrawn 21 cars on six lines." Eckert & Hilton, *supra* note 164, at 295.

<sup>183</sup> Schwantes, *supra* note 166, at 315 (quoting Sydney Strong, *A Nickel a Ride—When the Jitney Comes to Town*, 33 SURV. 647, 647 (1915)).

<sup>184</sup> Eckert & Hilton, *supra* note 164, at 299–300.

<sup>185</sup> *See, e.g.,* Schwantes, *supra* note 166, at 315.

<sup>186</sup> *See id.* at 314.

newspaper articles that described them as a 'gold mine'" when they were actually a "gold brick whose gilding will soon wear off."<sup>187</sup>

The streetcar industry eventually struck back with a vengeance, launching a nationwide lobbying and public relations campaign aimed at driving jitneys out of existence.<sup>188</sup> Municipal governments readily endorsed the industry's (irreconcilable) arguments that jitneys were inefficient and uneconomical and that they could be put down only by regulation.<sup>189</sup> The disorganized jitney operators were at a substantial disadvantage in the political sphere, and their late efforts at organization were generally to no avail.<sup>190</sup> Less than eighteen months after the first jitney appeared on Los Angeles streets, anti-jitney ordinances were enacted in 125 of the 175 cities where jitneys competed with streetcars.<sup>191</sup> Most of the remaining municipalities—even those with only a few jitneys—followed suit within a year, as did a number of state governments.<sup>192</sup>

Anti-jitney regulations took a number of forms. Where they were not banned outright, jitney operators were forced to operate as common carriers, subject to franchising and licensing requirements.<sup>193</sup> Regulations designed to prevent part-time operators from "poaching" rush-hour customers forced jitneys to operate during the least profitable times of the day.<sup>194</sup> Others required jitney operators to specify fixed schedules and routes, banned them from operating on streetcar routes, or excluded them from profitable downtown areas altogether.<sup>195</sup> Cumulatively, all of these restrictions had their intended effect of eliminating the jitneys' competitive advantage, which was the ability to provide flexible service tailored to individual passengers' needs.<sup>196</sup>

In the end, the jitney phenomenon ended as quickly as it began, with jitneys regulated out of existence.<sup>197</sup> In some cities, tough ordinances eliminated them within a matter of days.<sup>198</sup> Due in part to an ordinance prohibiting them from operating in the downtown area, the number of jitneys operating in Los Angeles fell from one thousand in 1916 to thirty-two a year later.<sup>199</sup> Nationwide, the number of jitneys plummeted from an estimated peak of 62,000 in 1915 to 5,879 three years later.<sup>200</sup> By the

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<sup>187</sup> *Id.* (quoting *The Jitney as a Gold Brick*, ERJ, May 15, 1915, at 919).

<sup>188</sup> *See id.* at 319–20.

<sup>189</sup> *See id.* at 321, 322; Eckert & Hilton, *supra* note 164, at 304–05.

<sup>190</sup> *See* Schwantes, *supra* note 166, at 322; Eckert & Hilton, *supra* note 164, at 305.

<sup>191</sup> Eckert & Hilton, *supra* note 164, at 319.

<sup>192</sup> *See id.*

<sup>193</sup> *See id.* at 308–10.

<sup>194</sup> *Id.* at 311.

<sup>195</sup> *Id.* at 311–13.

<sup>196</sup> *See id.* at 308–15.

<sup>197</sup> *See id.* at 307.

<sup>198</sup> *Id.* at 321.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 322.

early 1920s, the streetcar industry's victory was complete. Jitneys had virtually disappeared from the streets.<sup>201</sup>

### *B. Modern Jitneys in New York and Miami*

Although the historical account provides important insight into the ways in which jitneys might serve the urban poor,<sup>202</sup> the case in favor of jitneys need not stand or fall on history alone. Policymakers can also rely on evidence that informal jitney services are, today, serving the transportation needs of the urban poor in a number of American cities. As one scholar recently observed, jitneys "occur informally, often illegally, in many large U.S. cities, particularly those with large immigrant populations from countries where informal transportation is frequently a major and legal part of the public transportation system."<sup>203</sup> Because of the legal impediments discussed below, these services are provided outside of the law, making it difficult to learn much about them beyond the fact that they exist. The discussion that follows, therefore, concentrates on New York and Miami, the two cities where informal jitneys are best established, most visible, and have been most widely studied.

#### *1. New York's "Dollar Vans"*

Due in large part to its stringent regulatory restrictions on the for-hire vehicle industry, New York City has always had large and vibrant informal transportation services.<sup>204</sup> For decades, New Yorkers by the millions (particularly those who do not live in lower Manhattan) have depended on illegal transportation services—or legal services that operate in extra-legal ways—to serve their daily transportation needs.<sup>205</sup> These services, which range from high-class limousine services to shabby "gypsy cab operations," are vitally important, particularly in peripheral neighborhoods that are under-served by public transportation and ignored by medallion-carrying "yellow cabs."<sup>206</sup> Residents of these neighborhoods, the majority of whom are low-income minorities, would find it difficult to function without them.<sup>207</sup>

Although jitneys have always played a role in New York's large informal transportation market, they gained prominence during a series of strikes by public transportation workers during the early 1980s.<sup>208</sup> Seem-

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<sup>201</sup> See *id.* at 321–22; Schwantes, *supra* note 166, at 323.

<sup>202</sup> See *infra* notes 286–293 and accompanying text.

<sup>203</sup> McKnight, *supra* note 69, at 12.

<sup>204</sup> See Sigurd Grava, *We're Not Yellow, We Go Anywhere*, 42 *TRANSP. Q.* 349, 351 (1988).

<sup>205</sup> See *id.* at 350.

<sup>206</sup> See *id.* at 351.

<sup>207</sup> *Id.* at 350.

<sup>208</sup> See Howard Husock, *Enterprising Van Drivers Collide with Regulation*, *CITY J.*,



ingly overnight, hundreds of industrious New Yorkers, primarily Caribbean immigrants who were accustomed to using jitneys in their native countries, stepped forward to fill the void by providing inexpensive van services.<sup>209</sup> By necessity, commuters were introduced to a new type of transportation service, which many preferred to public buses.<sup>210</sup> Within a short time, the vans developed a loyal customer base. When the strike ended, transit officials found that neither the entrepreneurial van drivers, nor their customers, had any intention of returning to the way things were before.<sup>211</sup>

A great deal is known about the operation of these vans because they are highly visible and provoke the wrath of public transit officials and their allies in elective offices.<sup>212</sup> They have been the subject of a number of studies conducted by curious social scientists, industry advocates, and opponents, as well as government officials struggling to decide how to deal with this popular, but essentially illegal, service.<sup>213</sup> In the discussion that follows, I supplement this body of knowledge with my own personal observations. Between 1996 and 1998, I represented several operators of van services in Brooklyn and Queens who were challenging the state and local laws that restrict their operations.<sup>214</sup> Through my affiliation with these individuals, I gained a great deal of invaluable personal knowledge about New York's dollar-van industry.<sup>215</sup> I was able to spend considerable time riding in the vans, an experience that enabled me to interview passengers and drivers and observe the service first-hand.

During the 1980s and 1990s, the van industry grew despite persistent efforts by authorities to suppress it.<sup>216</sup> While current estimates about the number of passengers who rely on the vans vary widely, all of them are

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Winter 1996, at 60.

<sup>209</sup> See *id.*

<sup>210</sup> *Id.*

<sup>211</sup> See *id.*

<sup>212</sup> See, e.g., Willie James, Letter to the Editor, *Commuter Vans Are Risky Business*, WALL ST. J., Mar. 25, 1997, at A19; Willie James, Letter to the Editor, *Commuter Vans "Steal" Riders*, WALL ST. J., July 23, 1997, at A19; Jim Zarroli, *Commuter Van Wars* (NPR radio broadcast, June 2, 1998), LEXIS, Nexis Library, NPR File.

<sup>213</sup> See generally N.Y. CITY DEP'T OF CITY PLANNING, COMMUTER VAN SERVICE POLICY STUDY 5-21 (1997) [hereinafter VAN STUDY] (reviewing literature and summarizing study findings).

<sup>214</sup> For information about this well-publicized effort, see generally Editorial, *Driving the Poor Out of Business*, WALL ST. J., Mar. 3, 1997, at A18; Editorial, *Let the Vans Roll*, WALL ST. J., July 14, 1997, at A14; Anthony Ramirez, *Judge Rejects Most of Law on Commuter Van Licenses*, N.Y. TIMES, Mar. 24, 1999, at B4.

<sup>215</sup> There are three types of jitney services in New York City: "feeder vans that transport residents of a neighborhood usually to and from subway stations, commuter express vans which operate routes from the outer boroughs to Manhattan, and car services which serve intra-borough markets." N.Y. CITY METRO. TRANSP. AUTH., VAN AND CAR SERVICE ISSUES AFFECTING NYCTA SURFACE OPERATIONS 4 (1992) [hereinafter MTA STUDY]. This section focuses on feeder vans. Because they generally charge one dollar, *id.*, this Article refers to them as "dollar vans."

<sup>216</sup> See Husock, *supra* note 208, at 60-64.

substantial. The Interborough Alliance of Community Transportation, an informal van industry association that has approximately 500 members,<sup>217</sup> estimates that vans carry as many as 40,000 people per day.<sup>218</sup> In 1992, the New York Metropolitan Transportation Authority, which operates public transportation in the city, estimated that competition from van services cost it thirty million dollars in potential revenue per year.<sup>219</sup>

While the vast majority of van services operate without any official authorization, a few services have limited authority to operate a "commuter van service."<sup>220</sup> Commuter vans may neither accept street hails nor operate on bus routes.<sup>221</sup> Even a casual observer of the vans in action quickly will realize that authorized "commuter van services" routinely defy both prohibitions. Unregulated jitney service is illegal in New York City.<sup>222</sup>

Dollar vans operate exclusively in the outer boroughs.<sup>223</sup> Most of the dollar vans' customers rely on the vans as a substitute for public "feeder" bus service that links more remote residential neighborhoods and subway stations.<sup>224</sup> In addition, the dollar vans fulfill a number of other transportation needs, carrying passengers to suburban shopping areas, school, and work.

Although normally operating along informal, semi-fixed routes (frequently the bus routes that the law places off limits), dollar van service is extremely flexible. Unlike public buses, the vans do not have established pick-up and drop-off points.<sup>225</sup> Drivers accept street hails (again running afoul of the clear prohibition against such conduct)<sup>226</sup> and are generally

<sup>217</sup> See Aff. of Hector B. Ricketts, President, Queens Van Plan, Inc., and President, Interborough Alliance of Community Transportation, at 2, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author).

<sup>218</sup> See Editorial, *Council on Road to Van-dalism*, N.Y. DAILY NEWS, Aug. 4, 1997, at 26; Editorial, *Thwarting a Van Driver*, N.Y. TIMES, June 26, 1997, at A26; Zarroli, *supra* note 212.

<sup>219</sup> MTA STUDY, *supra* note 215, at 8.

<sup>220</sup> See VAN STUDY, *supra* note 213, at 1 (explaining that there are 361 authorized vans in New York City); *Council on Road to Van-dalism*, *supra* note 218 (indicating that there are "an estimated 5,000 such [van] operations—of which a mere handful have been licensed").

<sup>221</sup> N.Y. ADMIN. CODE §§ 19-502(p), 19-529.1(a)(2) (1999).

<sup>222</sup> See MTA STUDY, *supra* note 215, at 9 (explaining that "commuter van services comply with the same regulations as feeder vans").

<sup>223</sup> See *id.* at 5.

<sup>224</sup> See *id.*

<sup>225</sup> This became clear from my personal observations of the industry.

<sup>226</sup> Consider the statement of an owner of one of the van services in New York City:

First, the sheer volume of passengers that we carry each day makes it impossible for every single one of them to call ahead and arrange a ride. Second, because mass transit is so unreliable, it would be impossible for our customers to predict ahead of time when our services would be needed.

willing, for a nominal fee to provide door-to-door service upon request.<sup>227</sup> It is also not unusual for drivers to make specialized arrangements to serve particular passengers' needs. One of my former clients, for example, arranged to provide door-to-door service for night-shift nurses who otherwise would have lacked safe and reliable transportation home.<sup>228</sup> A passenger told me that she had arranged for a van driver to pick up her young daughter every morning and transport her to school.<sup>229</sup> Van drivers make similar arrangements to provide transportation for community groups.<sup>230</sup>

In addition to their flexibility, riders use the dollar vans because they are faster<sup>231</sup> and make far fewer stops than public buses.<sup>232</sup> Also, the number of vans in circulation far exceeds available buses, and many drivers operate late into the night, ensuring that vans arrive at frequent intervals and that customers need not wait long for service, even during off-peak hours.<sup>233</sup> When asked to compare the vans to bus service, passengers complain that the buses are slow and unreliable and assert that they can cut their commuting time in half—saving as much as two hours each day—by relying on vans rather than public bus service. One Queens resident explained:

My sons have to be to school early. To get there on time, they would have to wake up an hour earlier if they took the bus. The bus goes through its whole route; it travels all over the place. The van takes half the time. They can jump on the van and go straight to school. If they depended on the bus, I worry that they wouldn't get to school on time. . . . My husband works in Manhattan. . . . He has to be to work at 4:30 in the afternoon. If he's late, he can forget his job. The bus only comes every so often. In the winter sometimes not at all.<sup>234</sup>

Another told me:

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<sup>227</sup> See, e.g., VAN STUDY, *supra* note 213, at 8 ("Vans will often bring patrons close to their houses."); Aff. of Hector B. Ricketts, *supra* note 217, at 7.

<sup>228</sup> Aff. of Arthur V. Cummins, President, Brooklyn Van Lines, Inc., and Vice President, Interborough Alliance of Community Transportation, at 10–11, Ricketts v. City of New York, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author).

<sup>229</sup> Aff. of Rose-Ann Patterson, at 2, Ricketts v. City of New York, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author).

<sup>230</sup> See, e.g., Aff. of Rev. Paulette Shields, Pastor, Center of Hope Congregational Church, at 3, Ricketts v. City of New York, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author) (discussing his church's use of vans).

<sup>231</sup> See, e.g., VAN STUDY, *supra* note 213, at 8.

<sup>232</sup> See *id.*

<sup>233</sup> See Aff. of Arthur V. Cummins, *supra* note 228, at 11.

<sup>234</sup> Aff. of Lena Barnes, at 2, Ricketts v. City of New York, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author).

I use the vans because they are faster and more convenient than the buses. The vans come every few minutes, but the buses come only every fifteen or twenty minutes. There have been times, when I was waiting at the bus stop, and I saw four or five vans go by me. Still, in all that time, the bus did not arrive. Situations like these have lead me to rely exclusively on the vans for transportation. . . . I also take the vans because they are more flexible than the buses. In my experience, once a van fills up with passengers, the driver does not make any more stops. Everybody is guaranteed a seat. The bus make many stops along the road, even after all the seats are taken. This makes my trip long and more uncomfortable. . . . I save at least one hour commute time each day by taking the vans. . . . Whenever I had to take the bus, I would have to leave my house thirty minutes earlier for work, and I would get home thirty minutes later.<sup>235</sup>

The demand for this alternative to public transportation is particularly strong in remote communities like Far Rockaway, Queens, where residents frequently perceive that public transportation has slighted them. As Lebert Lindsey, an elder in a Far Rockaway church, explained:

The whole community needs the vans. We are twelve miles from Jamaica out here and we are on a peninsula . . . . Ours is a poor community . . . . Time is important, and anything you can do to save time puts you on the gaining side. The vans take less than half the time of buses. I know that our church members would get warnings and suspensions for coming late to work because of the buses. I see a bus every now and then, but they only run sporadically . . . . The bus drivers are not from our community; they don't live with our problems . . . . I don't see how this community could survive without local transportation that is as cheap and efficient as the vans.<sup>236</sup>

As Lindsey's comment illustrates, the dollar van industry's success is partially attributable to cultural factors.<sup>237</sup> Many van drivers and customers are Caribbean immigrants who became accustomed to relying on jitney service in their homelands.<sup>238</sup> Van passengers are comfortable with the van drivers because the drivers frequently live in their neighborhoods

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<sup>235</sup> Aff. of Pauline Dawkins, at 2–3, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author).

<sup>236</sup> Aff. of Lebert Lindsey, at 3–4, 5, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author).

<sup>237</sup> See VAN STUDY, *supra* note 213, at 8.

<sup>238</sup> See *id.*

and are thus attuned to the unique needs of their communities.<sup>239</sup> One van passenger described the service in the following glowing terms:

The van drivers are really courteous. Sometimes when I go to shop, the van drivers will take my packages and put them in the front. They'll put strollers in the front for people with children. I have been in the vans when there has been a long line for the van. The driver makes sure that the elderly and anyone who has a child or is handicapped gets on the van and has a seat before anyone else could get on the van. The van drivers really try to make the passengers feel that the van first is theirs. They wait for you, and I have been driven home at night. Even though it was off the van route, the driver took me to my door.<sup>240</sup>

In contrast, van passengers frequently speak with derision of the service provided by public buses. For example, the passenger above continued:

I have taken the bus occasionally. The bus drivers are really crude. I have seen them snap when passengers ask them questions. Often when I have been on the bus, the driver will start to drive before you get a seat. You lurch forward and could get hurt. Bus drivers won't even make sure that children are sitting before taking off. This is public transportation, but they aren't courteous enough to make sure that children are sitting down.<sup>241</sup>

Passengers express support for van services because they provide jobs for many who were laid off from work and/or were unable to find other gainful employment. As Lindsey explained,

The vans also provide jobs for people. They are owner operated. For many drivers, . . . this is their only means of making a living . . . . When they were laid off or lost their jobs, they turned to the vans. This is how they feed their family and keep their children in school.<sup>242</sup>

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<sup>239</sup> See *id.* ("The commuter vans are also seen as more sensitive to the needs of the local community than the city-subsidized bus service. The vans are often operated by local entrepreneurs and patronizing them is seen as a way of investing in the community....").

<sup>240</sup> Aff. of Sherry Lee-Sing, at 2, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author).

<sup>241</sup> *Id.* at 2-3. Another rider commented, "At night, I particularly appreciate the flexibility and courteousness of van services. . . . Bus service is as different as night and day from this level of courtesy." Aff. of Lorna Neblett, at 3, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author).

<sup>242</sup> Aff. of Lebert Lindsey, *supra* note 236, at 4-5.

Thus, while causing service disruptions and increasing the costs of doing business, New York City's sporadic enforcement sweeps targeting illegal van operations have done little to curb enthusiasm for the industry. If anything, enforcement of the laws prohibiting jitney operations contributes to a sense of solidarity between van drivers and passengers.<sup>243</sup> Lindsey continued:

As important as the vans are, I think it is a bleeding shame to see the police harass them . . . . The police say the vans cannot run along the bus route, but where are they supposed to operate? All the major roads here are bus routes . . . . It is sad that it is illegal to do something that is so vital to our community.<sup>244</sup>

Even the vans' most ardent opponents have acknowledged their advantages. For example, in 1992, the New York Metropolitan Transportation Authority ("MTA"), which operates public bus service in New York City, commissioned a study to determine how to respond to the competitive threat posed by illegal car and van services operating in the city.<sup>245</sup> The study recommended increased enforcement efforts against the illegal operations.<sup>246</sup> Before reaching this conclusion, however, the MTA admitted that "[f]eeder vans are strong competitors with the Transit Authority's local bus routes. They appeal to riders because they often offer more frequent service, are faster, charge less, and provide a seated ride, even in rush hour periods."<sup>247</sup> The MTA further acknowledged that "commuter vans have the advantage of being more flexible than buses"<sup>248</sup> and that "many van riders perceive transit as a poor alternative."<sup>249</sup>

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<sup>243</sup> For a general discussion of the factors motivating the phenomenon of support for illegal entrepreneurial activities in low-income African American communities, see Regina Austin, "*An Honest Living*": *Street Vendors, Municipal Regulations, and the Black Public Sphere*, 103 YALE L.J. 2119 (1994).

[F]or some poor blacks, breaking the law is . . . the only way to survive. Thus, what is characterized as economic deviance in the eyes of a majority of people may be viewed as economic resistance by a significant number of blacks . . . . [M]any blacks rightly understand that the line between the legal and the illegal in the area of economic activity is ephemeral and that the determination of the precise point at which the line is drawn is a matter of political struggle. Accordingly, blacks need to be in the thick of the battle, fighting for their interests. That means condoning, abetting, and sometimes even engaging in illegal activity. Blacks must be especially vigilant with regard to the local regulation of entrepreneurial activity, because the well-being of the black public sphere hinges upon it.

*Id.* at 2119–20.

<sup>244</sup> *Aff. of Lebert Lindsey*, *supra* note 236, at 5.

<sup>245</sup> MTA STUDY, *supra* note 215, at 1.

<sup>246</sup> *Id.* at 19.

<sup>247</sup> *Id.* at 7.

<sup>248</sup> *Id.* at 10.

<sup>249</sup> *Id.* at 7.

## 2. Miami's Jitneys

Jitney service is also well-established in Miami, Florida. Miami's jitney industry is in many ways unique, especially because jitneys have long been a legal component of the city's transportation market. Prior to World War II, minority entrepreneurs began offering jitney service to low-income neighborhoods that were under-served by the city's public transportation system.<sup>250</sup> These services provided "essential transportation to minority workers commuting to service jobs in downtown Miami and Miami Beach."<sup>251</sup> Prior to 1981, the City of Miami had issued operating certificates to three jitney services, all of which were required to operate on fixed, pre-established routes, when solicited by street hails.<sup>252</sup> In 1983, however, concerned that jitney services were siphoning passengers and revenues away from public Metrobus service, the county placed a moratorium on the consideration of any additional applications for jitney licenses pending a comprehensive policy study.<sup>253</sup> The county subsequently enacted an ordinance that prohibited jitneys from operating on any existing Metrobus or jitney route if the service would "result in serious negative impact on existing transit or jitney ridership."<sup>254</sup> The county further prohibited the operation of jitneys in "transit core corridors"—that is, within "one-half mile sectors of land centered along routes where current Metrobus service is provided every half-hour or more frequently."<sup>255</sup> Although the moratorium was subsequently lifted to permit authorization of several new services, the county has not issued new certificates since 1986.<sup>256</sup>

The Florida legislature passed a law in 1989 that prohibited "local governments from regulating private passenger motor courriers engaged in *intercity* transportation service."<sup>257</sup> Under the statute, private operators could provide "intercity" services between various municipalities within metropolitan Miami-Dade County without a license.<sup>258</sup> The Miami area was inundated with unlicensed jitney services, including "both licensed certificate holders who expanded their operations to new unlicensed routes, and new independent owner-operators, operating entirely without

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<sup>250</sup> See URB. MOBILITY CORP. & KPMG PEAT MARWICK, MIAMI JITNEYS 6 (Prepared for the Office of Private Sector Initiatives, Fed. Transit Admin., Sept. 1992) [hereinafter MIAMI JITNEYS].

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> See *id.* at 8.

<sup>254</sup> *Id.* at 9.

<sup>255</sup> *Id.* (quoting Metro-Dade Transp. Admin., Jitney Policy Report, Nov. 1983).

<sup>256</sup> *Id.* at 10. Taken together, these provisions "effectively precluded any further jitney services, other than those grandfathered in under the 1981 ordinance." *Id.* The county did approve six new routes in 1986, but subsequently cancelled them. *Id.*

<sup>257</sup> *Id.* at 13.

<sup>258</sup> *Id.* at 14.

any certificates.”<sup>259</sup> The legislature responded by passing “a corrective amendment in September 1990, limiting the statutory exemption to ‘intercounty’ transportation.”<sup>260</sup>

Since that time, county officials have conducted periodic enforcement sweeps, issuing citations to drivers and impounding hundreds of vehicles.<sup>261</sup> These enforcement efforts, however, have done little to curb the operation of illegal jitneys.<sup>262</sup> To the contrary, unlicensed jitneys have continued to proliferate, providing an impetus for county policymakers to consider a compromise solution.<sup>263</sup> The competing interests have not yet been able to reach agreement on a way to better incorporate the jitneys into Miami’s transportation network. One compromise proposal was developed by Miami’s mayor, but it was defeated by a 6-1 vote of the Board of County Commissioners.<sup>264</sup>

Because the majority of jitneys in Miami-Dade County operate without authorization, it is difficult to determine the precise scope of the industry. Prior to 1991, Miami had issued operating certificates to twelve jitney services.<sup>265</sup> In the wake of Hurricane Andrew, the county issued twenty-one emergency certificates, all of which have since expired.<sup>266</sup> There are at least seven jitney services that lack any operating authority.<sup>267</sup> Due to a number of factors, including periodic enforcement sweeps and the transient nature of many of the illegal operations, the number of jitneys constantly changes.<sup>268</sup> A study prepared for the Federal Transit Authority (“FTA”) estimated that in 1992 there were 393 jitneys operating in metropolitan Miami.<sup>269</sup> These jitneys carried between 43,000 and 49,000 riders per day, or between 946,000 and 1,078,000 riders per month—numbers equivalent to “23–27 percent of the current weekday Metrobus ridership at 183,000 and 18–20 percent of the current weekday public transit system ridership . . . .”<sup>270</sup>

The markets served by jitneys in Miami and New York are similar. As in New York, the Miami jitneys’ customer base is comprised largely

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<sup>259</sup> *Id.*

<sup>260</sup> *Id.* The legislature did “grandfather” all jitney services operating prior to January 1, 1990, but “due to an acknowledged scrivener’s error, the exemption was applied only to ‘intracity’ transportation, with the result that Dade County regained authority to regulate over all private transportation services.” *Id.* The Legislature unanimously passed a corrective amendment but the governor vetoed it. *Id.*

<sup>261</sup> *See id.* at 15.

<sup>262</sup> *See id.*

<sup>263</sup> *See id.* at 15, 18.

<sup>264</sup> *Id.* at 16–18.

<sup>265</sup> *Id.* In discussing the three jitney services operating before 1981, the study indicates that the services lease their permits to drivers and operators who pay a flat fee and assume operating costs. *Id.* at 6.

<sup>266</sup> *Id.* at 19.

<sup>267</sup> *See id.* at 20.

<sup>268</sup> *Id.*

<sup>269</sup> *Id.* at 20–21.

<sup>270</sup> *Id.* at 24.



of low-income workers. The FTA study found that almost 78% of jitney riders earned less than \$20,000,<sup>271</sup> and nearly 44% earned less than \$10,000, per year.<sup>272</sup> Many jitney riders are recent immigrants. Indeed, only 46% of riders surveyed reported speaking English as their primary language.<sup>273</sup> Miami residents' reasons for relying on jitneys parallel those offered in New York. Sixty-five percent of riders surveyed reported that they chose jitneys because they were faster than Metrobus service.<sup>274</sup> Twenty-five percent cited cost.<sup>275</sup> The Miami jitneys also arrive at more frequent intervals than buses.<sup>276</sup> Again paralleling New York, jitneys appear to have established a loyal customer base. A majority of jitney riders indicated they "always ride the jitney" for their transportation needs, while only thirty-one percent indicated they chose "whichever vehicle arrives first."<sup>277</sup>

The structures of the jitney markets in the two cities diverge somewhat. In New York, the dollar vans serve individuals with traditional "radial" commutes from residential neighborhoods in the outer boroughs to jobs in downtown Manhattan.<sup>278</sup> In Miami, on the other hand, the jitney routes tend to reflect the more modern commuting patterns predicted by spatial mismatch theorists. In other words, they serve workers who must "reverse commute" from Miami to outer suburbs or "cross-commute" between the surrounding suburban communities in Dade and Broward counties.<sup>279</sup> The fact that many jitney services entered the market as a result of the statutory loophole for intercity services created in 1989<sup>280</sup> further suggests that cross-commuting is prevalent. There is also anecdotal evidence that jitneys take passengers to locations that public transportation does not serve.<sup>281</sup>

### C. Lessons Learned: The Promise of Jitneys

Both contemporary and historical evidence suggest that poor urban dwellers could benefit substantially from jitneys. The jitneys' appearance

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<sup>271</sup> *Id.* at 28.

<sup>272</sup> *Id.* at Part II: Exhibits.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.* at 28.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.* (discussing an informal study conducted by the Miami Herald in April 1991, which found that jitneys arrived at more frequent intervals than Metrobuses).

<sup>277</sup> *Id.* at 27.

<sup>278</sup> I personally observed these service characteristics, and discussed the predominant commuting patterns with jitney riders and drivers during my representation of jitney operators.

<sup>279</sup> Broward County tackled the problem of regulating jitneys more recently. *See, e.g.,* Robert McClure, *Broward Sets Sights on Regulating Jitneys*, FT. LAUDERDALE SUN-SENTINEL, Dec. 9, 1998, at 4B.

<sup>280</sup> *See* MIAMI JITNEYS, *supra* note 250, at 14.

<sup>281</sup> Alfonso Chardy, *Jitneys Take Workers Where Buses Don't*, MIAMI HERALD, July 20, 1998, at 10A.

and remarkable success early in this century was a response, in large part, to conditions similar to those that currently impede the efforts of many poor Americans to gain economic self-sufficiency. Specifically, the prevailing system of public transportation (the street railway) was unable to serve adequately the transportation needs of the urban workforce.<sup>282</sup> The street car service limitations that spurred the development of jitneys closely parallel the problems with modern public transportation. Street cars were cumbersome, overcrowded, and slow.<sup>283</sup> They arrived at infrequent intervals, forcing passengers to wait for long periods and prolonging their commutes to work.<sup>284</sup> Furthermore, street cars were tied to fixed routes and thus were unable to tailor their services to passengers' demands.<sup>285</sup>

When jitneys appeared, they seemed to offer the perfect antidote to each of these complaints. Jitneys were much faster than street cars because they were smaller and made fewer stops.<sup>286</sup> The large numbers of jitneys in circulation, especially during rush hour, ensured that passengers need wait no longer than a few minutes to catch a ride to work.<sup>287</sup> Furthermore, jitney drivers could easily deviate from heavily traveled routes to meet the demands of individual customers.<sup>288</sup> Jitney drivers could shape their service in many ways to fit niche markets or to comport with their own work schedules.<sup>289</sup> Finally, jitneys had the added benefit of providing an income for thousands of men who otherwise would have faced economic dislocation.<sup>290</sup>

The very factors that attracted passengers to jitney service during the early 1900s could also prove beneficial to welfare recipients struggling to enter the workforce today. The relative speed of jitney service makes it an attractive alternative to commuting long distances via public transportation. If modern-day jitneys could replicate the relative time advantages they enjoyed during their heyday in the early part of the century, their availability might well tip the balance for some welfare recipients in favor of accepting jobs in remote suburban locations. Jitneys' flexibility might serve as the perfect antidote to the problems that make public transportation ill-suited to serve the needs of low-skilled and low-income inner-city residents. If jitney service could adapt to market demand today as well as it did in 1916, we could expect entrepreneurs to create "niche"

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<sup>282</sup> See *supra* notes 168–174 and accompanying text.

<sup>283</sup> See *supra* notes 168–174 and accompanying text.

<sup>284</sup> See *supra* notes 168–174 and accompanying text.

<sup>285</sup> See *supra* notes 168–174 and accompanying text.

<sup>286</sup> See *supra* notes 173–176 and accompanying text.

<sup>287</sup> See *supra* notes 173–176 and accompanying text.

<sup>288</sup> See *supra* notes 173–176 and accompanying text.

<sup>289</sup> See *supra* notes 173–176 and accompanying text. The evidence indicates that this specialization was quite common.

<sup>290</sup> See *supra* note 181 and accompanying text.

services that efficiently transport workers to dispersed suburban locations.

The parallels between 1916 and today are far from perfect. Jitneys' brief triumph occurred prior to (or at least at the cusp of) the widespread dispersal of population and employment.<sup>291</sup> Passengers generally lived and worked near central-city areas.<sup>292</sup> As such, the geographic scope of the jitneys' service was generally quite limited. Indeed, the jitneys' advantage over street cars was in trips of less than two and one-half miles in length.<sup>293</sup> If modern-day jitney service were merely to replicate this earlier model, it would do little to address the main transportation needs of the urban poor. On the other hand, if modern jitneys were to take advantage of their inherent flexibility to respond to market forces by providing reliable rides to dispersed suburban job locations, their re-introduction could be an important component of current welfare reform efforts.

Modern experience with illegal jitneys provides support for the latter conclusion. The very fact that jitney services have sprung into existence despite severe legal impediments provides powerful evidence that they satisfy a serious need. Moreover, empirical evidence suggests that the legal prohibitions that force certain industries "underground" tend to have a particularly detrimental effect upon traditionally marginalized groups—minorities, women, and the very poor.<sup>294</sup> As such, "underground economies provide comparatively greater opportunities for women and other groups traditionally subject to discrimination."<sup>295</sup> The jitney services in New York and Miami fit this pattern. Jitneys operate in the very neighborhoods that traditionally have suffered from a lack of adequate transportation, i.e., economically isolated minority neighborhoods in large urban centers, and are operated by entrepreneurs from those same communities.<sup>296</sup>

Furthermore, the proliferation of jitneys in cities like New York and Miami represents a response to a significant problem currently inhibiting welfare-reform efforts: the failure of legal transportation services to meet the demands of the urban poor.<sup>297</sup> Where they operate illegally in large

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<sup>291</sup> See *supra* notes 164–167 and accompanying text.

<sup>292</sup> See *supra* note 22 and accompanying text.

<sup>293</sup> See Eckert & Hilton, *supra* note 164, at 296.

<sup>294</sup> For an excellent discussion of the role of the informal economy in the developing world, see generally HERNANDO DE SOTO, *THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD* (1989).

<sup>295</sup> George L. Priest, *The Ambiguous Moral Foundations of the Underground Economy*, 103 YALE L.J. 2259, 2273 (1994); see also *id.* at 2259, 2260–62; Alejandro Portes and József Böröcz, *The Informal Sector under Capitalism and State Socialism: A Preliminary Comparison*, SOC. JUST., Fall-Winter 1988, at 21–22 (observing that "members of discriminated ethnic and racial groups tend to be overrepresented as workers in informal enterprises").

<sup>296</sup> See, e.g., VAN STUDY, *supra* note 213, at 8.

<sup>297</sup> See *supra* notes 225–249, 274–277 and accompanying text.

numbers, jitneys have a proven track-record of serving low-income workers. Riders report that without jitneys they would lack reliable transportation.<sup>298</sup> Jitneys are faster (cutting some commute times in half) and more reliable (arriving at more frequent intervals) than public bus service.<sup>299</sup> Jitneys are regularly available during off-peak hours of operation, when bus service is either sporadic or non-existent. As one rider observed:

My son also uses van services on a daily basis to go to work at the Red Lobster in Valley Stream. He works in the afternoon and needs a dependable means of transportation. Because he goes to work during off-peak hours, he has to wait [a] long time for the bus to arrive. He has been late to work because he waited so long to catch the bus. The van services, however, are readily available all day long. I know if he takes a van, he will be on time for work.<sup>300</sup>

The flexible nature of the service is invaluable to many customers, particularly women concerned for their safety.<sup>301</sup> One woman explained the value of the "door-to-door" dollar van service as follows:

Because I usually arrive home from work late at night, I am concerned about my safety. If I take the bus, I have to walk several blocks to get to my house. The streets in my neighborhood are not well lit . . . One of my neighbors was mugged a block away not long ago. For an extra dollar, the van driver will take me [ ] directly to my gate and make sure that I enter safely. I take advantage of this door-to-door service option every night, never fail.<sup>302</sup>

Finally, jitneys sometimes go where public buses do not, enabling their low-income riders to maintain jobs that would otherwise be unreachable.<sup>303</sup>

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<sup>298</sup> See *supra* notes 225, 244 and accompanying text.

<sup>299</sup> See, e.g., VAN STUDY, *supra* note 213, at 8; see also Schwantes, *supra* note 166, at 312.

<sup>300</sup> Aff. of Lorna Neblett, *supra* note 241, at 4.

<sup>301</sup> See, e.g., John Tierney, *Man With A Van*, N.Y. TIMES, Aug. 10, 1997, § 6 (Magazine), at 22 ("When I'm working late, it's very scary waiting in the dark for the bus and then walking the three blocks home. With Vincent's van, I get home in less than half an hour. He takes me right to the door and waits until I get inside.") (quoting Cynthia Peters, nurse and van customer).

<sup>302</sup> Aff. of Lorna Neblett, *supra* note 241, at 3

<sup>303</sup> See Chardy, *supra* note 281 (discussing "the lack of county buses to or from Miami International Airport—a major employment center—after 10:30 p.m. or before 6:30 a.m. That means workers on very late or very early shifts cannot get to work unless they have cars or use chartered bus or van services.").

Could these service characteristics be replicated elsewhere? In New York and Miami, the jitneys constitute a "home-grown" industry operated primarily by low-income entrepreneurs who tailor their services, for reasons of community solidarity as well as economics, to fit the needs of their neighbors.<sup>304</sup> Many drivers began operating jitneys because they perceived a need in their communities for better transportation. As such, the jitneys tend to fill in the gaps left by public transportation—providing the type of service that public buses cannot, or will not, provide. If permitted, entrepreneurs in other cities—"bootstraps capitalists" who understand their clientele's unique needs because they are from the same neighborhood—could fill the void left by public transportation by providing jitney services.

Jitneys could go a long way toward filling the gaps left by current efforts to address the transportation woes facing the urban poor. The proliferation of jitneys providing inexpensive, round-the-clock, flexible, reliable, and speedy transportation service that extends beyond the reach of current public transit networks would benefit thousands of low-wage workers who currently lack a reliable ride to work. Jitney services could respond to market demand in other cities by serving suburban job centers that are essentially unreachable by conventional mass transit, helping thousands of welfare recipients who face the daunting prospect of long "reverse commutes" to low-paying entry-level jobs. While, thus far, the jitney services that have sprung up despite legal obstacles frequently serve immigrants accustomed to using jitneys, removing legal impediments could lead to an expansion of the services in other poor communities.

Furthermore, because entry into the jitney market requires little formal training or capital investment, jitneys could also provide employment opportunities for current welfare recipients.<sup>305</sup> Especially in New York, there is ample evidence that many operators initially began operating jitneys when they lost another job.<sup>306</sup> Many drivers argue that jitney services constitute an economic lifeline that enables them to stay afloat

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<sup>304</sup> See VAN STUDY, *supra* note 213, at 8; Aff. of Arthur V. Cummins, *supra* note 228, at 10–11 ("Every night, I pick up several groups of nurses from their jobs late at night and drive them home. Right now, there are twenty-six nurses who rely on my service."); Aff. of Melviphier "Pat" Harvey, Owner, Pat Carrier and Sons, Inc., at 3, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author) ("Pat Carrier is dedicated to helping the community thrive. We work with three or four pastors from local churches. At their request, we often take senior citizens to the doctor or take children on field trips."); Aff. of Newland Nicholson, at 2, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author) ("I go out of my way for my passengers. If it's raining or snowing outside, I drop them off at their gate. If it's dark, I drop them off at their gate. All the van drivers will do that.").

<sup>305</sup> See *infra* note 374 for a discussion of the potential costs of entering the jitney market.

<sup>306</sup> See, e.g., Aff. of Everton Daswell, at 2, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author).

financially and avoid welfare.<sup>307</sup> In both Miami and New York, jitneys have proven that they not only *take people to work*, but they also *put people to work*. These facts alone should lead legislators to question whether the current legal regime has become an anachronism.

### III. REGULATORY IMPEDIMENTS TO INFORMAL JITNEY SERVICES

One major obstacle stands in the way of jitney services: jitneys are, for all intents and purposes, illegal in most states in this country.<sup>308</sup> Jitneys never recovered from early legislative setbacks. Even today, a complex maze of federal, state, and local regulations work together to keep them off the road and out-of-bounds for customers seeking a reliable ride to work.<sup>309</sup> As with any legal issue that is primarily local, the laws regulating private transportation services are far from uniform.<sup>310</sup> In this case, the task of describing diverse laws is made more difficult by the fact that many jurisdictions prefer the "death by a thousand cuts" form of regulation to outright bans on jitney services.<sup>311</sup> To understand how the law might be changed to unleash jitney services' potential—and to enlist low-income entrepreneurs like those operating in New York and Miami in welfare reform efforts—it is necessary to understand how the law makes many Americans strangers to jitney services.

#### A. Federal Impediments

The regulation of local transportation services has traditionally been, and continues to be, the province of state and local governments. Although no federal law actually prohibits entrepreneurial efforts to operate jitney services in the United States, the federal government has not re-

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<sup>307</sup> See, e.g., *id.* ("If I could not drive a van for a living, I don't know how I would support my family."); Aff. of Dennis Harry, President, Rockaway Commuter Line, Inc., at 5, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author) ("Most [of his drivers] would never seek public aid; they would rather work than seek welfare."); Aff. of Melviphier "Pat" Harvey, *supra* note 304, at 5 ("One of my drivers was earning \$25 each day. Now with the income he's earned driving, he was able to buy a home for his wife and children. That makes me feel good about my company. I have helped a man achieve the American Dream."); Aff. of Tivy Russell, at 2, *Ricketts v. City of New York*, 688 N.Y.2d 418 (N.Y. Sup. Ct. 1999) (No. 97-102455) (on file with author) ("When I worked in construction, it paid well. However, in construction, sometimes you work and sometimes you don't . . . I started driving vans because I needed something more dependable to support my family."); see also Austin, *supra* note 243, at 2123 (discussing the importance of another "underground" industry—street vending—in reducing black unemployment).

<sup>308</sup> See FRANKENA & PAULTER, *supra* note 162, at 25; DANIEL B. KLEIN ET AL., CURB RIGHTS: A FOUNDATION FOR FREE ENTERPRISE IN URBAN TRANSIT 107-10 (1997) (discussing how property rights could resolve the problems of free market transit that have plagued the few metropolitan areas that do allow jitneys).

<sup>309</sup> See *infra* notes 312-366 and accompanying text.

<sup>310</sup> See *infra* notes 323-325 and accompanying text.

<sup>311</sup> See *infra* notes 336-366 and accompanying text.

maintained purely agnostic about state and local transportation policy. To the contrary, beginning with the 1964 Urban Mass Transit Act, Congress indicated its preference for centralized public transportation systems.<sup>312</sup> Since that time, Congress has provided hundreds of billions of dollars in subsidies for mass transportation projects.<sup>313</sup>

As is often the case, these federal subsidies come with strings attached. Congress requires recipients of federal transportation funds to adopt generous protection policies for unionized public transit workers. Specifically, section 13(c) of the Mass Transit Act requires entities receiving such funds to shield transit workers against the negative impacts of competition.<sup>314</sup> The Department of Labor has determined that compliance with section 13(c) requires entities receiving federal transportation funds to enter into a collective bargaining agreement, the "Model Section 13(c) Agreement for UMTA Operating Assistance," with transportation employees represented by unions.<sup>315</sup> Under the terms of the Model Agreement, when a recipient of federal transportation funds makes *any* change that places any employee "in a worse position with respect to compensation," it must pay him a "displacement allowance" equal to his previous salary and benefits.<sup>316</sup> This entitlement does not terminate until the employee secures employment with compensation equal to or exceeding his previous employment or six years following the displacement or dismissal, whichever comes first.<sup>317</sup> Proponents of competition claim that, as interpreted, section 13(c) provides unions with a powerful political weapon to prevent any effort to introduce privatized mass transportation services or to subject public transportation systems to competition.<sup>318</sup> While it is not clear whether legislative changes that allow private services such as jitneys to operate would trigger the statutory guarantees, budget-conscious policymakers have to be on guard against the possibil-

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<sup>312</sup> Pub. L. 88-365, 78 Stat. 302 (1964) (originally codified at 49 U.S.C. §§ 1601-1621 (1988), recodified at 49 U.S.C. §§ 5301-5330, 5332-5338, 10531 (1994)) (also known as the Federal Transit Act).

<sup>313</sup> John Walters, *Bus-jacking the Revolution*, 75 POL'Y REV., Jan./Feb. 1996, at 8 (reporting that since 1964, the "government has showered mass transit projects with \$200 billion in subsidies"); see also Cy Malloy, *Transportation Issues Remain on Track*, CONCRETE PRODUCTS, Sept. 20, 1998, at 57 (noting that Congress appropriated an additional \$42 billion for public transportation projects in the 1998 Transportation Equity Assistance Act for the Twenty-First Century).

<sup>314</sup> Pub. L. 88-365, § 13(c), 78 Stat. 302 (1964) (codified at 49 U.S.C. § 5333 (1994)); see also Walters, *supra* note 313 (noting that section 13(c) of the 1964 Federal Transit Act "stipulates that any public transit worker 'negatively impacted' by competition may receive six years of salary and benefits").

<sup>315</sup> MODEL SECTION 13(C) AGREEMENT FOR UMTA OPERATING ASSISTANCE (on file with author). The American Public Transit Association and labor organizations representing public transportation workers agree that the terms of the agreement represent "fair and equitable" labor conditions. *Id.*

<sup>316</sup> *Id.* § 7(b).

<sup>317</sup> *Id.* §§ 6(a), 7(a).

<sup>318</sup> *Cf.* Walters, *supra* note 313.

ity. For example, section 13(c) forced Indianapolis Mayor Stephen Goldsmith to scrap his plans to permit independent, low-income entrepreneurs to operate van services in competition with city buses.<sup>319</sup>

### B. State and Local Impediments

Most of the regulations that directly restrict the operation of private passenger transportation services, including jitney services, are found in state statutes and local ordinances.<sup>320</sup> Many of these restrictions represent the vestiges of outdated anti-jitney legislation. For example, in 1994, a federal district judge invalidated a Houston ordinance that prohibited the operation of jitneys with a seating capacity of fewer than fifteen passengers within city limits.<sup>321</sup> The court found that the "intended effect of the ordinance," which was enacted by referendum in 1924, "was to 'classify' jitneys out of business" in order "to protect streetcar companies from competition."<sup>322</sup>

Like the anti-jitney laws enacted in the early decades of this century, the restrictions that remain on the books today employ a variety of methods to "'classify' jitneys out of business."<sup>323</sup> Many jurisdictions prohibit jitneys altogether, either expressly<sup>324</sup> or by implication.<sup>325</sup> Jurisdictions that fall into the latter category often prohibit private companies from providing group passenger transportation services except in the most limited circumstances, such as services operated by hotels, tour buses, and airports.<sup>326</sup> Other jurisdictions permit limited "commuter van" or "shuttle bus" services to operate, but reduce their attractiveness as a commuting option by mandating that customers prearrange pick-up and drop-off times, and by prohibiting the services from offering rides to individuals who hail them from the street.<sup>327</sup> The few jurisdictions that al-

<sup>319</sup> *Id.*

<sup>320</sup> See MIAMI JITNEYS, *supra* note 250, at 1.

<sup>321</sup> Santos v. City of Houston, 852 F. Supp. 601, 609 (S.D. Tex. 1994) (holding that the ordinance violated the Sherman Antitrust Act, and the Equal Protection and Due Process Clauses of the federal Constitution).

<sup>322</sup> *Id.* at 603, 608.

<sup>323</sup> *Id.* at 608.

<sup>324</sup> E.g., KAN. CITY, MO., CODE OF ORDINANCES ch. 76, art. II, § 76-43 (1999) ("No person shall drive, run or operate any jitney along or upon any street within the city at any time.").

<sup>325</sup> For example, some cities require all private transportation services to charge by metered fare, effectively precluding the operation of jitneys carrying unrelated passengers. See, e.g., BATON ROUGE, LA., CODE OF ORDINANCES tit. 10, ch. 3, § 10:208 (2000). Others simply do not provide for the authorization of jitney services. E.g., ATLANTA, GA., CODE OF ORDINANCES ch. 162, art. II, § 31 (2000) ("The following classifications of vehicles for hire are established: (1) Taxicabs; (2) Animal-drawn vehicles; (3) Limousines; (4) Extended Limousines; (5) Vans; and (6) Sedans.").

<sup>326</sup> See, e.g., *supra* note 325.

<sup>327</sup> See, e.g., N.Y., N.Y., ADMIN. CODE § 19-502(p) (1996); LANSING, MICH., CODIFIED ORDINANCES ch. 872.01 (1999).



low jitneys to exist legally generally require jitney providers to operate along fixed, franchised routes or in specified zones.<sup>328</sup> These restrictions deprive jitneys of the flexibility that gives them much of their competitive advantage by preventing jitneys from tailoring their services to meet the needs of urban workers struggling to reach dispersed suburban jobs.<sup>329</sup> Other jurisdictions prohibit private transportation services from operating on major thoroughfares, at least those that serve as public bus routes.<sup>330</sup>

Just as early anti-jitney legislation was designed to protect the revenues of streetcar services, contemporary anti-jitney laws promote the goal of shielding public transportation, especially public bus service, from private competition. In addition to placing public bus routes off-limits and otherwise restricting private services so as to eliminate any competitive advantage, most jurisdictions require all new transportation services to secure a "certificate of public convenience and necessity."<sup>331</sup> These requirements give public transportation authorities virtual veto-power over any new entrant that poses a competitive threat.<sup>332</sup> To secure the required certificate, the applicant must prove the service is something that the public as a whole needs and not something that only a portion of it desires.<sup>333</sup> The applicant thus bears the burden of rebutting evidence, usually submitted by existing public transportation providers who are entitled to intervene in the proceedings,<sup>334</sup> that the existing providers not only do not serve a public need, but also that they *could not be made to satisfy that need*.<sup>335</sup>

<sup>328</sup> See, e.g., CHICAGO, ILL., MUN. CODE § 9-112-480 (1997); HOUSTON, TEX., CODE OF ORDINANCES § 46-354(a)-(e) (2000); L.A., CAL., MUN. CODE § 80.36.8 (1997).

<sup>329</sup> See, e.g., CHICAGO, ILL., MUN. CODE § 9-112-480 (1997); HOUSTON, TEX., CODE OF ORDINANCES § 46-354(a)-(e) (2000); L.A., CAL., MUN. CODE § 80.36.8 (1997).

<sup>330</sup> E.g., DADE COUNTY, FLA., METRO. CODE ch. 31, § 103(g)(4) (2000); N.Y., N.Y., ADMIN. CODE § 19-529.1(a)(2) (1999).

<sup>331</sup> William K. Jones, *Origins of the Certificate of Public Convenience and Necessity: Developments in the States, 1870-1920*, 79 COLUM. L. REV. 426, 427-28 (1979); see also 13 AM. JUR. 2D *Carriers* § 125 (2000) ("In many states there are statutes which require common carriers by motor vehicle to obtain a certificate declaring that the public convenience and necessity require such operation."); CHICAGO, ILL., MUN. CODE § 4-348-040 (1993); L.A., CAL., MUN. CODE § 71.12 (1996); 52 PA. CODE § 41.14 (1997); William B. Tye, *The Economics of Public Convenience and Necessity for Regulated Utilities*, 60 TRANSP. PRAC. J. 143, 143 (1993) (stating that firms are protected from the threat of competition in exchange for agreeing to comply with certain regulation constraints).

<sup>332</sup> See 52 PA. CODE § 41.12 (1996) ("The act provides the Commission with the discretion to determine the amount of competition which best serves the public interest.").

<sup>333</sup> See 13 AM. JUR. 2D *Carriers* § 130 (2000).

<sup>334</sup> Jones, *supra* note 331, at 427.

<sup>335</sup>

A certificate should be granted only when the existing transportation facilities do not, and cannot be made to, meet the demands of public convenience . . . . In a proceeding to secure a certificate of public convenience and necessity for common carrier service by motor vehicle, the burden of showing the requisite public convenience and necessity, the inadequacy of existing transportation facilities or service, and that the applicant is a person of the character and responsibility to

The requirement that individuals seeking to enter the transportation business first secure a certificate of public convenience and necessity is a classic regulatory entry barrier.<sup>336</sup> Its practical (and intended) effect is to protect existing providers from competition.<sup>337</sup> One long-accepted justification for the requirement is the need for regulatory authorities to prevent "ruinous competition" among providers.<sup>338</sup> As public choice theory teaches, repeat players in the regulation game tend to "capture" the regulators.<sup>339</sup> "[T]he entrepreneur seeking entry generally must back his judgment with substantial resources, whereas the regulatory body risks nothing by denying entry and may indeed protect itself against troublesome problems of administration by protecting a familiar (if obsolete) incumbent."<sup>340</sup> Thus, even the best efforts and most fervent arguments of a would-be entrant tend to fall on deaf ears, regardless of their validity.

The laws restricting the operation of private van services in New York City vividly illustrate the legal roadblocks facing would-be entrepreneurs hoping to operate jitney services. In 1993, the state of New York passed legislation authorizing New York City to assume responsibility for regulating passenger van service within its boundaries.<sup>341</sup> The New York City Council took advantage of the invitation and passed a local law regulating van services.<sup>342</sup> Individuals must apply for authorization to operate a "commuter van service" within city limits.<sup>343</sup> The local law defines a commuter van as "a commuter van service . . . carrying passengers for hire in the city duly licensed as a commuter van by the Commission and not permitted to accept hails from prospective passengers in the street"<sup>344</sup> and that may operate only "on a pre-arranged regular daily basis."<sup>345</sup> The law further prohibits commuter vans from picking up or discharging passengers on any road used as a public bus route, barring access to virtually every major street in the city.<sup>346</sup>

An applicant for this limited authorization to operate a "commuter van service" bears the burden of proving that the proposed service "will

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whom such certificate should be issued, is upon the applicant.

13 AM. JUR. 2D *Carriers* § 132 (2000) (citations omitted).

<sup>336</sup> See Tye, *supra* note 331, at 143.

<sup>337</sup> See Jones, *supra* note 331, at 427 ("[T]he essence of the certificate of public convenience and necessity is the exclusion of otherwise qualified applicants from a market.").

<sup>338</sup> Ford P. Hall, *Certificates of Convenience and Necessity*, 28 MICH. L. REV. 107, 108 (1929); see also Jones, *supra* note 331, at 428.

<sup>339</sup> See, e.g., Jones, *supra* note 331, at 515.

<sup>340</sup> *Id.*

<sup>341</sup> N.Y. TRANS. L. § 80(5)(a) (McKinney 1993).

<sup>342</sup> Court Decisions, N.Y. L.J., Mar. 24, 1999, at 27 (explaining provisions of Local Law 115).

<sup>343</sup> N.Y., N.Y., ADMIN. CODE § 19-504.2(a) (1993).

<sup>344</sup> N.Y., N.Y., ADMIN. CODE § 19-502(p) (1996).

<sup>345</sup> *Id.* § 19-502(q).

<sup>346</sup> See *id.* § 19-529.1(a)(2).

be required by the present or future public convenience and necessity."<sup>347</sup> The law does not specify how an applicant might go about making such a showing, but applicants generally collect statements from potential customers indicating a need for their service.<sup>348</sup> The law provides opponents of the service the opportunity to rebut an applicant's effort to make the requisite "public convenience and necessity" showing. The city's Department of Transportation must provide for public notice and comment on the application as well as directly notify the New York Metropolitan Transportation Authority when an application is filed.<sup>349</sup> If an application is "protested by a bus line operating in the city," the Department of Transportation must also consider "the adequacy of the existing mass transit and mass transportation facilities" and "the impact that the proposed operation may have on any existing mass transit or mass transportation facilities."<sup>350</sup>

This system vests absolute discretion in the regulatory authorities.<sup>351</sup> The law neither provides guidance about how the Department of Transportation should make the requisite "public convenience and necessity" determination,<sup>352</sup> nor provides direction about how to evaluate the "adequacy of existing mass transportation."<sup>353</sup> In one case, an applicant submitted 938 support statements indicating that the proposed service was desperately needed to augment inadequate bus service, yet the city council never acted on the application.<sup>354</sup> The authority charged with issuing the license, the New York City Taxi and Limousine Commission, can deny the application even if the Department of Transportation finds that the service is necessary *and* that public transportation is inadequate.<sup>355</sup> Alternatively, the law authorizes the Taxi and Limousine Commission to refuse to act for 180 days, in which case the application is deemed denied.<sup>356</sup> City authorities are at no point required to provide a disappointed

<sup>347</sup> *Id.* § 19-504.2(e)(1).

<sup>348</sup> *See, e.g.*, Aff. of Arthur V. Cummins, *supra* note 228, at 5.

<sup>349</sup> N.Y., N.Y., ADMIN. CODE § 19-504.2(e)(3) (1993).

<sup>350</sup> *Id.*

<sup>351</sup> Technically, an unsuccessful applicant can ask a state court to review the city's decision. N.Y. C.P.L.R. art. 78 (McKinney 2000). Relief will be forthcoming, however, only if the court finds that the local authority's decision to deny an application constituted an abuse of discretion. The city is not required to provide any record explaining its decision, making it virtually impossible for a disappointed applicant to make such a showing. If the Taxi and Limousine Commission exercises its authority simply to do nothing, the court is left with nothing to review.

<sup>352</sup> N.Y., N.Y., ADMIN. CODE § 19-504.2(e)(1) (1993).

<sup>353</sup> *Id.* § 19-504.2(e)(3)(a).

<sup>354</sup> *See* Aff. of Arthur V. Cummins, *supra* note 228, at 5; Editorial, *Thwarting a Van Driver*, N.Y. TIMES, June 26, 1997, at A26; Editorial, *Let the Vans Roll*, WALL ST. J., July 14, 1997, at A14. Under intense political pressure and facing a lawsuit by the disappointed applicant, the city council struck a deal to authorize 40 vans. *See* Aff. of Arthur V. Cummins, *supra* note 228, at 10.

<sup>355</sup> *See* N.Y., N.Y., ADMIN. CODE § 19-504.2(e)-(f) (1993).

<sup>356</sup> *See id.* § 19-504.2(f)(1).

applicant with a record of their decision.<sup>357</sup> Finally, until recently, the city council had the power to veto any decision of the Taxi and Limousine Commission to grant an application for a commuter van service.<sup>358</sup>

Since the city assumed regulatory responsibility in 1994, virtually all applications for limited "commuter van service" licenses have been denied.<sup>359</sup> In some cases, the applicant successfully negotiated the administrative process, convincing the New York City Department of Transportation that the proposed service was "necessary" and that mass transportation was "inadequate."<sup>360</sup> Under pressure from unions representing public transportation workers, however, the New York City Council exercised its now-defunct authority to veto approval of the application.<sup>361</sup> The city has authorized approximately 300 commuter vans,<sup>362</sup> but most of these received their licenses from the State Department of Transportation prior to 1994.<sup>363</sup>

Even if the applicant is successful, securing authorization proves of little value to individuals operating van services in New York City because the operating restrictions placed upon commuter van services prevent them from legally providing the services their customers need and demand.<sup>364</sup> As a result, most authorized providers operate in clear derogation of at least two of the limitations placed upon them: vans accept street hails and pick up and discharge passengers on bus routes.<sup>365</sup> By operating in this fashion, the dollar vans manage to stay afloat financially and provide a valuable service. They also incite the wrath of public transportation officials and their political allies, and expose themselves to regular traffic citations and vehicle impoundments.<sup>366</sup>

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<sup>357</sup> See *id.* § 19-504.2(f).

<sup>358</sup> See *id.* § 19-504.2(f)(3). A state trial judge recently invalidated this provision as *ultra vires*; the decision is on appeal. See *Giuliani v. Council of City of New York*, 688 N.Y.S.2d 413 (N.Y. Sup. Ct. 1999).

<sup>359</sup> See Aff. of Hector B. Ricketts, *supra* note 217, at 3.

<sup>360</sup> See Aff. of Arthur V. Cummins, *supra* note 228, at 5; Aff. of Hector B. Ricketts, *supra* note 217, at 6.

<sup>361</sup> See, e.g., *Council on Road to Van-dalism*, *supra* note 218; *Dream On*, WALL ST. J., July 21, 1997, at A22 (discussing the city council's decision to "veto" Brooklyn Van Line's application for authorization to operate 40 commuter vans).

<sup>362</sup> VAN STUDY, *supra* note 213, at 3.

<sup>363</sup> Aff. of Hector B. Ricketts, *supra* note 217, at 3. State law requires the city to reissue "grandfathered" authorizations to these services. N.Y. TRANSP. LAW § 80(5)(a)(1)(iii) (McKinney 2000).

<sup>364</sup> See Aff. of Arthur V. Cummins, *supra* note 228, at 12-13 (discussing the restrictions and stating that "the current regulatory regime makes our service largely an outlaw activity"); Aff. of Hector B. Ricketts, *supra* note 217, at 9-10 (same).

<sup>365</sup> *Supra* note 228; Aff. of Arthur V. Cummins, *supra* note 228, at 12 ("The bus route prohibition not only increases traffic in residential areas; it also makes it impossible to provide the type of quality service that our passengers demand."); Aff. of Dennis Harry, *supra* note 307, at 6 ("The rules not allowing us to pick up or drop off passengers on bus routes are very difficult. Rockaway is a peninsula surrounded by the Bay and the ocean. The only main street . . . is a bus route. People do not like to go down . . . the other streets because it's so unsafe.").

<sup>366</sup> One observer notes:

## V. A MODEST PROPOSAL FOR LEGAL REFORM

The notion that jitneys could fill in the gaps in public transportation that currently impede welfare-reform efforts is consistent with policies that many states promote, including policies that encourage welfare recipients to become transportation providers—adopted with apparent disregard for (or perhaps ignorance of) the laws that preclude such efforts.<sup>367</sup> Of course, lawmakers should not abdicate responsibility for regulating private passenger transportation services. Given concerns about passenger safety, the government has a legitimate interest in regulating such services. In light of the evidence that jitneys might provide the very type of transportation service that inner-city residents desperately need, the wisdom of keeping them off the streets is questionable.

My proposals for legal reform, therefore, are modest and straightforward. First, lawmakers should legalize jitney services by repealing laws that prohibit or restrict them and enact in their place laws that are more narrowly tailored to address legitimate public health and safety concerns. Second, given the limitations inherent in even the best public transportation systems, lawmakers should de-couple the regulation of private transportation services from policies designed to preserve and enhance public transportation. Jitneys should be viewed as a complement, not a threat, to public transportation.

*A. Direct Impediments to Jitney Operations*

Jitneys in New York and Miami manage to provide a valuable service despite laws that essentially prohibit their operation. This situation, however, is far from ideal from the perspective of either the jitney operators or the public. The legislative prohibitions stifle the entrepreneurial impulses of many would-be operators, keeping them off the streets altogether and depriving residents of a needed service. Those who choose to operate do so under the constant threat of legal sanction.<sup>368</sup> Furthermore, van operators may have difficulty securing financing to purchase new equipment or expand their service because investment in an illegal business is viewed as risky by traditional sources of capital.

Legal restrictions that force jitneys into the underground economy also hinder the government's ability to enforce legitimate health and

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Van drivers face the constant prospect of being cited by the police, and their vans seized, for providing the service that their customers demand. When this happens, passengers are left stranded by the side of the road, and drivers and service owners must spend a great deal of time and money defending against the charges.

Aff. of Hector B. Ricketts, *supra* note 217, at 11.

<sup>367</sup> See, e.g., FLA. STAT. § 445.025(1) (2000).

<sup>368</sup> See Aff. of Hector B. Ricketts, *supra* note 217, at 11.

safety regulations. Illegal jitney services generally operate without adequate liability insurance because a government-issued authorization is often a prerequisite for policies covering vehicles for hire.<sup>369</sup> Furthermore, because operators are subject to criminal sanctions simply by virtue of the fact that they are on the street, they have little incentive to provide adequate driver training or, in some cases, to invest in safe and reliable vehicles.<sup>370</sup> Finally, laws prohibiting certain forms of service, such as bans on accepting street hails, may lead drivers to operate recklessly<sup>371</sup> to avoid detection, sacrificing passenger safety to avoid criminal sanction. Due to these safety concerns, lawmakers cannot responsibly enlist jitney services in the welfare reform effort while legal restrictions prohibiting their operation remain on the books.

These problems are fairly easily rectified. In recognition of the valuable service that jitneys could provide, especially for low-income workers, lawmakers should legalize them.<sup>372</sup> In some jurisdictions, this means repealing laws that prohibit their operation altogether. In others, the law must be amended to recognize jitneys as a legal form of transportation service and provide for their authorization by the appropriate regulatory authority. Alternatively, lawmakers could eliminate operating restrictions that prevent existing forms of transportation services from legally providing the informal, flexible, unscheduled service that welfare recipients need to get to work.<sup>373</sup>

In place of these restrictions, lawmakers should adopt and enforce regulations that more directly address legitimate regulatory responsibilities. Concerns about passenger safety, for example, can be addressed through more narrow measures, including reasonable liability insurance

<sup>369</sup> See, e.g., VAN STUDY, *supra* note 213, at 8–9 (discussing allegations that jitneys are unsafe and uninsured).

<sup>370</sup> Many of the operators in New York insist that concern for their passengers and their reliance on the vans as their soul source of income lead them to invest in safe equipment. See, e.g., Aff. of Dennis Harry, *supra* note 307, at 4, 5; Aff. of Hector B. Ricketts, *supra* note 217, at 5. For an explanation of why informal norms and community ties might lead to such a result, see generally ROBERT ELLICKSON, ORDER WITHOUT LAW 123–264 (1996).

<sup>371</sup> Many commentators have criticized jitneys as being dangerous. See William Booth, *Miami's Jitney War: Entrepreneurs Drive Bus Riders Away*, WASH. POST, July 29, 1992, at A3; David Fleshler, *Road Warriors: Jitneys Bob and Weave in Battle for Riders Against Buses*, FT. LAUDERDALE SUN-SENTINEL, Oct. 29, 1998, at 1B; *For Safety's Sake, Encourage Legal Van Services*, NEWSDAY, July 25, 1997, at A42; Mitchell Landsberg, *L.A. Mounts Crackdown on Entrenched Bandit Taxis Safety: Thousands of Drivers Operate Without Licenses*, L.A. TIMES, Jan. 17, 2000, at A1; Garry Pierre-Pierre, *Livery Vans Are Feeling the Metrocard Pinch; Drivers Say Their Business Is Down and the Competition Is Up*, N.Y. TIMES, Jan. 14, 1999, at B1; *Crash Sparks Fierce Debate, More Regulation for Illegal Vans Backed, Stalled*, N.Y. DAILY NEWS, Jan. 12, 1999, at 2.

<sup>372</sup> See, e.g., Sassen, *supra* note 19, at 2301–02 (arguing that “[f]rom an economic perspective, criminalization makes no sense” in poor communities because “[t]he informal economy is one of the few forms of economic growth evident in these communities”).

<sup>373</sup> For a discussion of the impediments under existing legal forms of transportation, see generally *supra* notes 64–130 and accompanying text.

requirements, driver training courses, and regular vehicle inspections.<sup>374</sup> Sweeping operating restrictions, such as prohibitions on operating along major thoroughfares or accepting street hails, are not necessary to safeguard pedestrians or to maintain order on the public streets. These legitimate concerns can be addressed by more narrow measures. Indeed, in a recent book, scholars Daniel Klein, Adrian Moore, and Binyam Reja set forth an innovative proposal for the orderly integration of private transportation services such as jitneys. The authors advocate allocating property rights to the curbs along public streets among various transportation providers.<sup>375</sup> While this system of "curb rights" may prove more attractive in theory than in practice, more modest measures, such as establishing "van stops" along major roads, would accomplish the same goal.

### *B. Indirect Impediments to Jitney Operations*

As the debate over jitneys in Miami and New York illustrates, many of the laws prohibiting or restricting private group transportation services are, like their earlier counterparts, motivated by the desire to protect public transportation from private competition. In both New York and Miami, for example, private transportation services are prohibited from operating on major thoroughfares that serve as public bus routes.<sup>376</sup> In both cities, efforts to authorize additional van services or to liberalize restrictions upon them are routinely defeated by deafening cries from public transportation authorities, their employees, and their political allies that the vans "steal" passengers from the public buses.<sup>377</sup>

Lawmakers should reconsider requirements that institutionalize a presumption in favor of public transportation, especially laws imposing

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<sup>374</sup> In adopting such regulations, state and local regulators can draw important lessons from the federal experience of deregulating the transportation industries. As a general matter, the federal regulatory reform efforts have eliminated price and entry restrictions but have maintained strict health and safety regulations. *See generally* Joseph D. Kearney & Thomas W. Merrill, *The Great Transformation of Regulated Industries Law*, 98 COLUM. L. REV. 1323, 1334–38 (1998) (describing deregulation of airlines, railroads, and trucking). These regulations undoubtedly will increase the cost of operating jitney services. Some potential entrepreneurs may be priced out of the market. On the other hand, legalizing jitney services may open up previously unavailable sources of capital. *Cf. Aff. of Hector B. Ricketts, supra* note 217, at 11 ("Because the grandfather authorizations are temporary and are only valid through 2000, the value of our businesses and our investments have been drastically reduced."). For example, money made available through "microloan" or "micro-enterprise" programs, which provide low-interest loans to entrepreneurs who might not otherwise qualify for credit, could help a willing operator get off the ground. *See generally* LISA J. SERVON, *BOOTSTRAP CAPITAL: MICROENTERPRISES AND THE AMERICAN POOR* (1999) (discussing microenterprise programs in the United States).

<sup>375</sup> *See* KLEIN ET AL., *supra* note 308, at 107–13.

<sup>376</sup> *See supra* note 330 and accompanying text.

<sup>377</sup> *See, e.g.,* Booth, *supra* note 371; Willie James, Letter to the Editor, *Commuter Vans 'Steal' Rides*, WALL ST. J., July 23, 1997, at A19; William T. Kenney, Jr., Letter to the Editor, *Commuter Vans 'Steal' Riders*, WALL ST. J., July 23, 1997, at A19.

nebulous "public convenience and necessity" requirements. Rather than letting the market determine whether the public "needs" a service that has never before been available, these provisions require the applicant to bear the onerous burden of rebutting the presumption that no need exists. The applicant must challenge current providers of mass transportation who, as repeat players, are more likely to have the ear of the regulator making the public convenience and necessity decision.<sup>378</sup> In the case of jitneys, public convenience and necessity requirements inevitably give public transportation authorities the opportunity to defeat an application for operating authority either by showing that they can, theoretically, satisfy the need identified or by demonstrating that the applicant's service will create "ruinous competition" by stealing passengers from them.<sup>379</sup> Even if the public convenience and necessity hurdle were theoretically surmountable, the burden of satisfying it would be onerous for the low-income entrepreneurs who would otherwise step forward to help their neighbors. Experience in New York and Miami suggests that many jitney operators are barely a step ahead financially of their low-income and working-class customers.<sup>380</sup> These "bootstraps capitalists" lack the resources and sophistication necessary to rebut the evidence that their well-financed opposition will inevitably amass against them in regulatory proceedings.<sup>381</sup> Therefore, amending the law to recognize jitneys as a legitimate form of transportation likely will prove an empty exercise so long as public convenience and necessity requirements remain in place. Eliminating the public convenience and necessity hurdle to authorization is a necessary prerequisite to enlisting the very individuals who are most familiar with their neighbors' transportation problems and thus most likely to lend a helpful hand in the welfare reform effort.<sup>382</sup>

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<sup>378</sup> See *supra* notes 336–340.

<sup>379</sup> See Hall, *supra* note 338, at 108 (citing "ruinous competition" justification for public convenience and necessity requirements).

<sup>380</sup> See Aff. of Dennis Harry, *supra* note 307, at 5 ("My drivers work hard. Before they came to work for me, many of them were out of work, but they refused to go on unemployment. They own their own vans."); Aff. of Melviphher "Pat" Harvey, *supra* note 304, at 2 ("Before I started my van service I worked as a nurse's aide . . . I saw that transportation services were inadequate where I worked . . . Eventually, I decided that I could earn money by helping to fill the transportation void. So I bought a van . . ."); Aff. of Hector B. Ricketts, *supra* note 217, at 8 ("Van services like Queens Van Plan provide jobs for workers who might otherwise lack employment. We provide opportunities for individuals of modest means to become entrepreneurs and investors."); see also Husock, *supra* note 208, at 62.

<sup>381</sup> See Aff. of Arthur V. Cummins, *supra* note 228, at 3–10 (describing his nearly four-year effort to obtain authorization); Aff. of Hector B. Ricketts, *supra* note 217, at 10 (discussing the Interborough Alliance of Community Transportation's futile efforts to help operators obtain authorization).

<sup>382</sup> Eliminating these requirement would also be in line with recent legal developments strongly favoring deregulation. See generally Kearney & Merrill, *supra* note 374 (discussing deregulation in railroads, airlines, trucks, telecommunications, electricity, and natural gas).



Traditionally, efforts to improve the transportation services available to the urban poor have focused on providing additional public transportation.<sup>383</sup> A complete discussion of the presumption in favor of public transportation is far beyond the scope of this article. However, the discussion above illustrates that inherent limitations in traditional mass transportation services likely make it impossible for public transportation authorities to serve adequately the needs of many central-city residents.<sup>384</sup> How lawmakers should respond to the potential competitive threat posed by jitneys is an important public policy question. Stifling competition by banning jitney services—which offer hope of filling in the gaps left by even the best public transportation system—is not the best response. The current system of regulation, which is heavily weighted in favor of the status quo, makes no sense when the status quo has proven so ill-equipped to address the transportation needs of the urban poor. A more appropriate response to jitneys' competitive threat would be to adopt policies that support and encourage both types of services.<sup>385</sup>

## VI. CONCLUSION

When the government enters into a contract with a van service, at least some limited number of welfare recipients will be guaranteed a ride to work. The same cannot be said for the decision to liberalize restrictions on jitney services. The experience of Miami and New York suggests that, if permitted to operate, jitneys can contribute invaluable and permanently to efforts to improve the economic prospects of America's inner-city residents. Of course, in some cities, jitneys may be a total flop. Perhaps their remarkable success in New York and Miami is attributable to the presence of large numbers of immigrants accustomed to relying on

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<sup>383</sup> See generally JUST TRANSPORTATION: DISMANTLING RACE AND CLASS BARRIERS TO MOBILITY (Robert D. Bullard & Glenn S. Johnson eds., 1997) (calling for additional public transportation services in poor minority neighborhoods); Anne Simmons, *A Ride to Work: TEA-21 and PRWORA*, 18 LAW & INEQ. 243 (2000) (arguing that increasing public transportation should be a welfare-reform requirement).

<sup>384</sup> See Farkas, *supra* note 63, at 88–92 (discussing limitations of public transportation in Baltimore and advocating that the government reduce regulations that inhibit the private sector from operating complementary transportation services).

<sup>385</sup> One possibility would be to support public transportation through increased public subsidies, if necessary. See Jones, *supra* note 331, at 509. If history has any predictive value, public transportation has little to fear from competition. All evidence indicates that substantial public investment in public transportation will continue even if competition by private jitney services were to undercut ridership substantially. Since 1964, Congress has spent nearly \$200 billion subsidizing mass transportation projects. See Walters, *supra* note 313. During this same time, public transportation costs per vehicle mile increased, while ridership declined precipitously. See KLEIN ET AL., *supra* note 308, at 12. In 1992, there were, on average, 9.3 passengers per bus (with a capacity of 70); this figure includes rush hour traffic. See *id.* at 12. "Off-peak buses run virtually empty." *Id.* at 12. Between 1960 and 1992, the ratio of earnings (from passenger fares) to operating costs fell from 1.03 to 0.37; approximately 70% of the operating budgets of public transportation systems now come from taxpayers. *Id.* at 13.

jitneys to serve their transportation needs.<sup>386</sup> However, the question for legislators ought not to be whether jitneys will in fact successfully augment the transportation services available to our poorest citizens. Rather, the question should be whether it makes sense to maintain legal restrictions that hinder the development of transportation services that hold so much promise of improving the economic prospects of the very poor.

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<sup>386</sup> See, e.g., Sassen, *supra* note 19, at 2290 (suggesting that immigration may play a large role in the “informalization” of economic activities in advanced capitalist countries).

