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A PLAN FOR THE HEARING AND DECIDING OF TRAFFIC CASES

PAUL A. JOHNSTON*

INTRODUCTION

Recent expressions of opinion by responsible groups and individuals throughout the United States reveal a growing dissatisfaction with existing facilities and procedures for the hearing and disposition of traffic cases and the processes related thereto.¹

This article consists of a restatement of some of the principal objections underlying this dissatisfaction, and a plan designed to meet those objections. The plan is offered not necessarily as a recommendation but rather as a possibility which might profitably be examined by persons interested in doing something about the problems to be found in the handling of traffic cases.

RESTATEMENT OF THE PROBLEM

In 1938, the National Committee on Traffic Law Enforcement and the National Conference of Judicial Councils authorized Mr. George Warren of Trenton, New Jersey, to make a nationwide survey of courts charged with the responsibility of hearing and deciding cases involving traffic law violations. In the words of Chief Justice Vanderbilt of the Supreme Court of New Jersey, "It was hoped that out of the experiences in traffic problems revealed by the survey there would be evolved standard procedures adequate to cope with the many problems of traffic court administration."²

The resulting report was published in book form in 1942³ after having been approved by most national organizations that have concerned themselves with traffic law enforcement problems.⁴

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¹ See VANDERBILT, *TRAFFIC LAW ENFORCEMENT AND THE SIXTEEN RESOLUTIONS OF THE CHIEF JUSTICES AND THE GOVERNORS*, Institute of Judicial Administration, Washington (July 1953); WARREN, *TRAFFIC COURTS* (Boston: Little, Brown and Company, 1942); Economos, *The Traffic Problem, Traffic Laws, and Traffic Courts*, the ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, Philadelphia (May 1953). See also the resolution, *J.P.'s and Traffic Courts*, adopted by the North Carolina Bar Association in convention, June 26, 1954.

² Foreword to WARREN, *op. cit. supra*, note 1. The term "traffic court" as used in this quotation means any court that handles traffic cases. Its meaning is not restricted to courts that handle only traffic cases.

³ WARREN, *TRAFFIC COURTS* (Boston: Little, Brown and Company, 1942).

⁴ Among those organizations approving the report were the National Committee on Traffic Law Enforcement; the National Conference of Judicial Councils; the

Because the survey was nationwide in scope, the conclusions reached in it are necessarily somewhat general and probably not completely applicable in all respects to any particular state. However, it seems probable that at least some of the conclusions are applicable in each state, and, therefore, summary digests of what seem to be the principal findings of the survey will serve here as a restatement of the problem.⁵

1. Most violators of traffic laws are criminals only in a technical sense, and if treated as ordinary criminals will not respond in a manner which may be expected to insure better traffic law observance.⁶ Such treatment seems rather to arouse only antagonism and non-cooperation. When the average citizen is summarily arrested and forced to appear and wait in surroundings that often are disreputable—seated or made to stand among petty thieves, alley drunks, streetwalkers and vagrants in general—merely to have his case, when finally called, disposed of in a routine and impatient manner, he departs with resentment toward the entire process that has brought him there.⁷

Section of Criminal Law, the Section of Judicial Administration, the Junior Bar Conference and the House of Delegates of the American Bar Association; the National Safety Council; and the International Association of Police Chiefs.

A review of material written in this field since this report was published seems to reveal that Mr. Warren's survey has served as a source for most recent statements of the problems related to the judicial handling of traffic cases.

That the problems pointed up by the survey continue to exist is demonstrated by a statement contained in the introduction to *TRAFFIC LAW ENFORCEMENT AND THE SIXTEEN RESOLUTIONS OF THE CHIEF JUSTICES AND GOVERNORS* (1953). Chief Justice Vanderbilt there refers to Mr. Warren's survey and says, "It was discontent with the relatively slow pace of progress in this vital field that led the Conference of Chief Justices in 1951 to adopt unanimously sixteen resolutions concerning traffic courts."

⁵ Material from WARREN, *op. cit. supra* note 3, is used with the permission of the National Conference of Judicial Councils. Comments contained in footnotes to the material contained in this restatement of the problem are, except as otherwise indicated, those of the present writer.

⁶ Most traffic violations committed by average citizens are committed foolishly and carelessly perhaps, but seldom maliciously. This observation is of course not meant to apply to drunken drivers, hit-and-run offenders, or drivers who use public highways for race courses.

It should be remembered throughout consideration of this material that *ordinary* traffic law violations are its concern. Of course, there are drivers who are so contemptuous of the lives and property of others, as well as of their own, that concern over their being labelled and treated as criminals is unnecessary. Certainly a driver who recklessly hurtles his car through a crowded city street at 60 miles per hour is a criminal, as are the drunken drivers, etc., mentioned in the preceding paragraph. Fortunately, however, the number of such drivers is small when compared with the number who forgetfully allow their foot to become too heavy on the accelerator while driving a new car on an open, four-lane highway, or allow a tail-light to burn out without their knowledge, or proceed through a stop sign without having come to a full stop although they may have slowed down and may have looked both ways. Drivers within the latter groups are the ones referred to by the term "most violators of traffic laws."

⁷ This resentment is apt to find expression in opposition to adequate safety laws, in non-cooperation with law enforcement officers, and in an attitude of contempt for the entire judicial process.

2. Rules of procedure for the handling of ordinary criminal cases are not necessary or appropriate in the deciding of most traffic cases. "Since the average traffic violation does not present the complexities of the usual criminal case, it is possible to eliminate details, technicalities and procedures intended for more involved situations without injury to the rights of defendants."⁸
3. "The situation with regard to judicial personnel on the traffic bench can be generalized as unsatisfactory."⁹ A surprising number of judicial officers who preside over courts in which traffic cases are heard, as well as other kinds of cases, are without legal training, and in many instances these officials are without even an elementary knowledge of the laws they are attempting to apply. Certainly persons who preside over forums in which legal issues are the subject of dispute should have legal training. But even judges who have legal backgrounds are not necessarily equipped for the effective handling of traffic cases. There seems to be general agreement that driver attitude is the real key to traffic safety,¹⁰ and in order to correct or improve the attitudes of drivers who have been guilty of traffic law violations, special facilities and training are needed by officials deciding such cases. Few judges have either

One of the principal concerns of lawyers and judges is with this general contempt apt to be developed for the entire judicial system. It has been forcefully pointed out that the only contact most citizens ever have with their judicial system is as a result of a traffic violation. "What they see and hear—and sometimes smell—in these courts does not tend to create respect for law or for the judges and lawyers administering law. And people are coming to these courts by millions each year as defendants or as witnesses in traffic matters—20 million as defendants in 1951—in comparison with the relatively small number who experience justice from the courts of last resort in the state house. These local tribunals collectively can do more to undermine respect for law than the appellate courts can possibly overcome, try as they will. From the judicial point of view this aspect of the work of the traffic courts [courts in which traffic cases are among those handled and not limited to those handling traffic cases only] is quite as significant as the necessity of curbing the constantly growing loss of life and property. Thoughtful judges and lawyers do not need to be told that our kind of government cannot exist long, once respect for law is destroyed." Stated by Chief Justice Vanderbilt in his David Beecroft Memorial Award address as quoted in Economos, *The Traffic Problem, Traffic Laws, and Traffic Courts*. See note 1 *supra*.

It would be interesting to know what long-term effect the habitual violation of traffic laws by parents has on children who observe these violations. Perhaps in some children this flouting of the criminal law by their parents builds up a tendency to regard all criminal laws as something to be ignored whenever they stand in the way of some desired objective; perhaps some of the modern so-called juvenile delinquency grows out of the development of such an attitude. Certainly a society in which the breaking of criminal laws is a daily habit of respectable citizens cannot long look to such laws as deterrents of crime. It is possible that the practical effect of a system which labels good citizens as criminals is not to make those citizens criminals—it is more likely to discredit the criminal law.

⁸ WARREN, *TRAFFIC COURTS* 35 (Boston: Little, Brown and Company, 1942).

⁹ *Id.* at 88.

¹⁰ *Id.* at 142-166.

the time, the inclination, or the training and equipment to engage in a program of driver education.

4. In many states, traffic cases are decided by officials whose fees depend upon a finding that an offense has been committed. The possible evils of this condition are so obvious and have been pointed out so often that little need be added here.¹¹
5. Punishments for the same offense vary unnecessarily from locality to locality. Although some discretion on the part of judges is desirable and necessary, there seems to be little justification for the wide discrepancies in penalties assessed defendants convicted of the same offense committed under similar circumstances but tried in different localities.¹²
6. Most courts, when imposing punishment in a traffic case, do not have available the driver record of the defendant. Yet one of the most important causes of the appearance of repeaters in traffic cases is the lack of attention paid to the previous record of a guilty defendant in assessing punishment.¹³
7. In few localities are there facilities permitting prompt disposition of traffic cases. In many jurisdictions courts in which traffic offenses are tried sit only one or two days per week. In some localities such courts do not convene even that often.¹⁴

¹¹ Even in cases that are beyond the jurisdiction of these fee judges there is still opportunity in many states for the existence of questionable practices that may take place in connection with a preliminary hearing. What would seem to be an undesirable practice is that of a magistrate at preliminary hearing accepting an amount from a defendant equal to the maximum fine usually levied by the local court and arranging, upon payment by the defendant of an additional amount, for a local attorney to plead the defendant guilty when the case is called. This practice may be defended on the ground that it avoids the necessity of the defendant's putting up a bond (of an amount usually in excess of the fine and the lawyer's fee) and then forfeiting the bond by a failure to appear. Thus the argument runs that the defendant is actually the beneficiary of the practice. Although this attempt at justification may be technically valid, it seems probable that the total effect is not apt to be one which will increase the defendant's respect for traffic law enforcement and the persons connected with it.

Another practice which is of doubtful legality is that of some inferior court judges who delegate to local magistrates the authority of the courts to hear cases, which although not within the jurisdiction of the magistrates, are within the jurisdiction of the inferior courts.

¹² As has been pointed out in several speeches by the Honorable Edward Scheidt, North Carolina Commissioner of Motor Vehicles, in North Carolina unreasonable variances are also found in "costs" assessed in the different courts with respect to traffic cases.

¹³ "The neglect to utilize this basis in assessing penalties is a vital factor in the number of drivers who are returned to court for similar offenses and this type of defendant represents one of the gravest menaces to public safety." WARREN, *op. cit. supra* note 8, at 151.

Because of the range of travel of many drivers, it is theoretically possible for a single driver to be found guilty of innumerable traffic law violations and never appear before the same court twice. Naturally, appropriate punishment would more likely be imposed in such cases if each judge had the driver's previous record before him for use when sentence is passed.

¹⁴ In 17 or 18 North Carolina counties, there are no courts between those of

This means that a defendant must usually post bond and return for trial at some subsequent date, or, if he finds it too inconvenient to return, he will forfeit bond which will result in a judgment having the effect of a conviction.¹⁵ Few motorists find it feasible to arrange their affairs so as to return, at a date often far in the future, to be tried in a locality through which they were merely passing. Most will "pay off" in any way possible and depart feeling themselves the victims of some sort of skulduggery.

8. The number of man-hours spent by law enforcement officers in escorting defendants to magistrates to post bonds, and in waiting in courtrooms for the trial of cases, constitutes an expensive drain on the time of such officers—time which could be spent to better advantage on the highways.

In order to appreciate fully the value of Mr. Warren's survey, his book, *TRAFFIC COURTS*, should be read in its entirety. Readers will be particularly interested in his recommendations which are designed to alleviate most of the problems found to exist. The plan below is also designed to alleviate those problems but in a somewhat different way.

THE PLAN

Theory of the Plan

The plan considered here is designed principally to permit the original hearing and deciding of traffic cases in administrative forums instead of in courts. As will be explained subsequently, however, the courts through application of the criminal law will continue to furnish the "force" in traffic law enforcement. They will also hear appeals from administrative decisions.

Under this theory, the violation of a traffic law will, in most instances, no longer constitute a crime. Instead, it will constitute an abuse of the privilege (or right) to drive on the public highways.¹⁶ A violator will not ordinarily be subject to the processes of the criminal law—processes such as arrest, preliminary hearing, bond, trial, a criminal fine, or a jail sentence. Instead, he will be subject to the sanctions of administrative

justices of the peace and the superior court. There is a criminal term of superior court in these counties on an estimated average of twice each year.

¹⁵ In North Carolina, defendants who are known to an arresting officer as being reliable persons are usually given a citation rather than arrested. This eliminates the necessity of a bond. If the defendant fails to appear as cited, a warrant for his arrest may then be issued.

¹⁶ That most drivers who commit traffic law violations will not initially be labelled as criminals does not mean that they will not be effectively controlled. In fact, under this plan a driver whose conduct is so reckless and wanton as to leave no doubt of its criminal nature will be reasonably certain to receive the label and treatment of a common criminal. This is discussed further in note 31 *infra*.

law in the form of a financial penalty, and in some instances the additional penalty of license deprivation.¹⁷

Reclassification of Offenses

As previously mentioned, this plan calls for a reclassification of most motor vehicle offenses so as to make them abuses of a privilege rather than commissions of a crime.¹⁸ However, because of the nature of certain motor vehicle offenses, and in order to permit enforcement of administrative penalties, some of these offenses must continue to constitute crimes as well as abuses of the driving privilege; for example, such offenses as hit-and-run, driving under the influence of alcohol or drugs, and driving without a license or during periods of license suspension. Of course, driving in a manner so negligent as to result in a death will continue to constitute manslaughter or murder, as the case may be. Failure to stop upon order of a law enforcement officer or failure to act in compliance with his lawful instructions and requests will also constitute crimes which will justify the use of his powers of arrest and permit criminal prosecution.

But the more common violations of motor vehicle laws such as exceeding a speed limit, running a stop sign or signal, etc., will not constitute crimes but will constitute abuses of the driving privilege.

Penalties

What the appropriate penalty is for the commission of a particular motor vehicle offense may be a matter of reasonable disagreement. Agreement seems to be general, however, that such penalties should ordinarily be administered for educational purposes and secondarily for punitive purposes, and that an ideal schedule of penalties will be one which will identify and remove from the highways those drivers who fail to respond to properly administered punishment.

This plan contemplates that penalties for the commission of offenses constituting an abuse of the driving privilege will be administered by administrative officials specially trained in driver education, accident statistics and analysis, traffic engineering, and other subjects related to

¹⁷ As a matter of immediate impact on a violator's pocketbook, there is, of course, little difference in substance between being subjected to a criminal fine and being assessed a financial penalty; and as a matter of immediate impact on a violator's right to drive, there is little difference in substance between a license suspension resulting from a criminal conviction and one resulting solely from administrative action. However, the change in theory will permit far-reaching differences in the procedures of traffic law enforcement, and should in the final analysis make considerable difference to the violator of traffic laws as well as to those who are endangered by his actions.

¹⁸ To this extent, a state such as New Jersey would have little trouble adjusting its laws to this theory. In that state motor vehicle offenses, as well as several other offenses, are now classified as "disorderly offenses" rather than as misdemeanors or felonies. Apparently, the fundamental reason behind this change was, as here, to permit the application of different procedures in the handling of such cases. However, traffic cases in New Jersey continue to be handled by the courts.

problems of highway safety. Thus, there is reasonable assurance that under this plan proper emphasis will be placed upon driver education. The remaining problem, so far as penalties are concerned, is to select a schedule of punishments which will identify and remove from the highways those offending drivers who fail to respond to "educational" punishment.

The kind of schedule which seems most likely to solve the aforementioned problem is one based upon the "point system"; that is, one which assigns to each motor vehicle offense a specified number of points and sets up a range of punishment to be imposed upon drivers whose records reveal a certain number of points accumulated during a given period of time.

Solely for purposes of illustration, a partial schedule is set out below. Both the number of points assigned to each offense and the range of penalties assigned to particular point totals have been somewhat arbitrarily chosen and may be varied in any way desired. Since the schedule is solely for illustrative purposes, only a few offenses have been included.

<i>Offense</i>		<i>No. of Points</i>
(a) Failing to stop at a stop sign		1
(b) Following too closely		1
(c) Speeding above 55, but below 66		2
(d) Speeding above 65, but below 75		3
(e) Reckless driving		4
(f) Passing on a hill or curve		4
(g) Speeding 75 or above		6
(h) Drunken driving		8

<i>Point Total¹⁰</i>	<i>Penalty</i>
1	\$15
2	\$25
3	\$50
4	\$50 and license suspended for from 3 to 7 days.
5	\$75 and license suspended for from 15 to 30 days.
6	\$100 and license suspended for from 3 to 6 months.
7	\$150 and license suspended for from 3 to 6 months.
8	\$200 and license suspended for from 6 to 12 months.

¹⁰ The use of point totals to determine the range of penalties will result in repeaters eventually receiving serious penalties even for minor infractions. For instance, a driver who within a twelve-month period has been penalized for two "speeding below 66" violations will, if caught failing to stop at a stop sign, find himself subject to a financial penalty of \$75 and a license suspension for as long as thirty days merely because of his failure to stop at the stop sign. This may at first glance seem unduly harsh; but it is to be remembered that repeaters, even when the violations are of a relatively minor nature, have shown themselves either unable or unwilling to respond to less than serious penalties.

This schedule has no provision for the assessment of costs. It is thought that the financial penalties should be large enough to include costs in order to avoid the resentment unnecessarily aroused in many drivers as a result of having to pay a bill of costs consisting of numerous archaically labelled fees and, in some instances, including items such as a contribution to the law enforcement officers' retirement fund and the local law library fund. If necessary, these items may be allocated from the total amount of the financial penalty without an itemized statement being given to each defendant.

Since financial penalties are, for the most part, for the purpose of financing administration, they should be rigid and not subject to change by the official who decides the case. This will also provide a more uniform application of penalties throughout the state, while the discretion needed for proper application of more serious penalties will be allowed with respect to periods of license suspension.

Finally, when considering penalties under this plan, it should be remembered that some offenses, because of their nature, will continue to constitute crimes as well as abuses of the driving privilege—for instance, drunken driving and hit-and-run. With respect to these offenses, an offending driver will have to answer to both the court and the administrative official, and neither's decision should be binding upon the other.²⁰ Of course, an appeal will be available both from the court and from the administrative decision.²¹

Apprehension of Violators

The apprehension of violators of traffic laws will, under this plan, be accomplished in the initial stages by the use of techniques similar to those presently being followed, except that in the case of a violation which constitutes only an abuse of the driving privilege, there will ordinarily be no technical arrest. Law enforcement officers will be authorized to stop violators and will be expected to perform this duty in substantially the same manner as at present. Once a violator has been stopped, however, the process will differ.

An officer who stops a violator whom he intends to charge with an offense which is an abuse of the driving privilege will be authorized to require the violator to hand over his permanent driver license. The officer will at that time "lift" this license and will issue to the violator a substitute in the form of a temporary license. The officer will write on this temporary license the name, address, and permanent license number of the violator and a statement of the offense

²⁰ Because of the different nature of the two proceedings, this double responsibility does not constitute double jeopardy (at least with respect to the license suspension). *Commonwealth v. Funk*, 323 Pa. 390, 186 Atl. 65 (1936).

²¹ These are discussed under the section, *Appeals infra*.

being charged. The temporary license will be dated to expire on a date falling within the immediate future. This date of expiration will have been selected by the officer and the local administrative official as the date of the current week or month on which all cases in which that particular officer is involved as prosecuting witness during that week or month will be heard. Each officer in the locality will have a different date for the hearing of his cases; or, in many instances, a single day may be split between two or more officers. For example, one officer's cases may be heard in the morning of a particular day and another officer's cases may be heard on the afternoon of the same day.

At the time the officer "lifts" the permanent license of a driver, he will inform the driver that the temporary license will expire at 12:00 o'clock midnight of the date stamped thereon, but that on the last day during which the temporary license is valid, the driver will be given an opportunity for a hearing and if following the hearing it is found that no offense was committed or if the offense committed does not invoke a license suspension, his permanent license will be returned to him. The officer will further inform the driver that if the driver does not appear at the hearing, he will be assessed the maximum penalty for the offense charged, and his permanent license will not be returned until the penalty has been satisfied. The driver will also be reminded that in the event his permanent license has not been returned by the day following the expiration date of the temporary license, he will be without a license, and if found driving an automobile, will be charged with the crime of driving while his license is suspended. After these explanations, the driver will be allowed to continue on his way.

The process described above is, of course, designed to insure the driver's presence at the hearing without having to resort to arrest and detention or bail. This method should prove more convenient and less embarrassing to a driver charged with a traffic law violation and should at the same time furnish satisfactory assurance that he will be present on the date of his hearing.²²

It is to be remembered that failure to comply with a law enforcement officer's demand to stop or to hand over a license when requested to do so will constitute crimes for which the officer may resort to his powers of arrest, and if necessary take the violator to jail. It is also to be remembered that in the event a violator is drunk or under the influence of drugs, the officer may arrest him and commit him to jail.

So far, the process described above has not met the question of what to do about non-resident violators or other violators who may for good reasons be unable to appear at the hearing on the date fixed. A procedure somewhat as follows can be used in such cases: a non-resident,

²² This device is suggested in WARREN, *op. cit. supra* note 8, at 41.

or a state resident who is a long distance from his home, may be given an immediate hearing by taking him directly before the local administrative official and, if necessary, temporarily interrupting the docket of cases being heard at that time.²³ Thus, the case may be settled immediately. And in order to allow for emergency cases of various kinds, the administrative officials will be given authority to grant continuances and to issue temporary licenses good until the date fixed for the continued hearings.

The Hearing

Before describing the nature of the hearing called for by this plan, it seems necessary to consider first the machinery for the holding of hearings. The most important aspect of this machinery will be the personnel who are to preside.

The administrative officials who are to preside at hearings will be hearing officers hired in accordance with state personnel regulations and in conformance with qualifications prescribed by the legislature. They may be designated as personnel of the department of motor vehicles; or, if this is thought to mix too closely the enforcement and quasi-judicial functions, they may be placed in a division of the Attorney General's Office²⁴ or in an independent department of hearing officers headed by a chief appointed by the Governor or by the supreme court.

Whatever administrative arrangement is chosen, hearing officers should be required to have legal training. They should also be required to undergo special training in the hearing and disposition of traffic cases.²⁵ They should be available for work at least five, eight-hour days per week and should alternate among themselves the additional duty of being on call for hardship cases during nights and week-ends. They should be paid a salary commensurate with the responsibility of the position, and there should be a sufficiently large number of them to provide a minimum of one or two per county and more in the larger or more populous counties. All cities above a certain size should be assigned one or more hearing officers to handle cases arising therein.²⁶

²³ As will subsequently be explained, administrative officials will be available for work five, eight-hour days each week and will take alternate turns "on call" during nights and alternate week-ends.

²⁴ This arrangement would be subject to the criticism that it mixes the prosecution and quasi-judicial functions.

²⁵ The special training given these men, in addition to their legal training, should include courses in driving technique and education, accident statistics and analysis, basic practical psychology, and traffic engineering. They should also receive additional training in the taking of evidence, and the preparation of a record.

²⁶ Any exact determination of how many hearing officers will be needed should be preceded by a survey of traffic case loads of each county and city; and even with this preparation, considerable adjustment probably will have to be made from time to time.

Parking violations and violations of other municipal ordinances constitute a specific problem. In most cities simple monetary penalties are now imposed for

Another important aspect of hearings will be the physical surroundings in which they are held. Each hearing officer should be provided with a hearing room designed along the lines of a small court room and furnished sufficiently well to offer an appearance of quiet dignity. There should be reasonably comfortable seating arrangements for twenty-five or thirty defendants, and the room should be kept in good order. A private office for the hearing officer should adjoin the hearing room, and in localities where there is consistently a heavy traffic docket, a secretary should be furnished. Hearing rooms should probably be located as near the edge of towns or cities as possible in order to permit ample parking space.

The hearing called for by this plan will be governed by rules of procedure typical of quasi-judicial proceedings common to administrative law. There must be notice of what is charged and the date fixed for hearing. (This is provided on the temporary license issued to a driver charged with a violation.) A defendant will be entitled to counsel and to cross-examine witnesses. Hearing officers will be authorized to subpoena witnesses and necessary papers for a defendant as well as for the state. Technical rules of evidence will not be applicable, and any evidence may be admitted, although a decision may be based only upon substantial competent evidence as revealed by the record as a whole.²⁷ The hearing officer will be required to make formal findings of fact and to base his decision thereon. He will also be required to prepare a summary of the evidence, but this may be done after the decision has been announced. Only in the event of notice of appeal will copies of

parking violations and are collected by traffic bureaus, police departments, and other administrative officials. Where the penalties are not paid voluntarily, however, the only way in which they can be made effective is through criminal prosecutions following the issuance of warrants.

The argument that ordinary traffic violations should not constitute crimes is particularly appealing in the case of parking violations. If the plan considered in this article were put into effect, cities could continue to impose and collect penalties for parking and other municipal traffic violations through city traffic bureaus, but could rely upon the administrative tribunals for enforcement against persons who refused to pay the prescribed penalties or who were consistent violators. The person who violated a parking regulation and refused to pay the penalty or who violated parking regulations, for example, three or more times within a twelve-month period, could be notified to appear for a hearing at a certain time and place and that his driving license would be suspended for a specified length of time if he failed to appear.

These cases could be heard under the same rules and procedures applicable to violations of state traffic regulations. Thus all cases involving violations of traffic laws could be removed from the criminal courts, and state and municipal traffic laws could be enforced before the same hearing officers.

²⁷ This provision seems to permit something approaching a re-weighing of the evidence by the court to which a case is appealed. *Universal Camera Corp. v. NLRB*, 340 U. S. 474 (1951). It seems, however, to be generally assumed that in cases in which the evidence on both sides approaches equality, the administrative decision will be affirmed even though the court might have decided the other way if it had heard the case originally. Schwartz, *The Administrative Procedure Act in Operation*, 29 N. Y. U. L. Rev. 1251 *et seq.* (1954).

the entire record of the proceeding be furnished the defendant. The decision will be announced immediately following the hearing, and if the defendant is found to have committed an offense, the appropriate penalty will be assessed.²⁸ As already mentioned, hearing officers will be authorized to continue cases upon a showing of hardship.

Application of Penalties

In order to conform with a schedule of penalties of the kind previously described, hearing officers must have available the driver record of a defendant against whom a penalty is to be assessed. Since there is no way of knowing in advance just which defendants will be found to have committed an offense, this means that the driver records of all defendants who are to appear at a given time must be available. It is expected that this will be accomplished as follows:

In the section dealing with apprehension of violators, it was explained that at the time a law enforcement officer stops a driver and "lifts" his permanent driving license, a temporary license will be issued on which the officer will have written the name, address, and license number of the driver, as well as the offense being charged. Several copies of this temporary license will be made at the time it is issued, and at the end of each day, the law enforcement officer will mail to the Department of Motor Vehicles one copy of each temporary license he has issued that day. The Department, upon receipt of these copies, will pull from the files the driver records of the violators named thereon and mail these records to the hearing officer who is to hear the cases. Thus, on the date of the hearings of those particular defendants, their driver records will be available.²⁹ Hearing officers will be instructed that driver records are not to be used for any purpose other than for the assessment of penalties and that no defendant's record is to be opened unless and until there has been a finding that the defendant has committed an offense.³⁰

Once a determination has been made that a penalty is in order, the record of the defendant will be examined. What it reveals will govern the hearing officer's actions in two respects: first, it will guide his approach to the problem of convincing the driver of the urgency and necessity as well as the wisdom and common sense of highway safety.

²⁸ As explained in the next section, penalties involving license suspension may, in hardship cases, be held in abeyance for one or two days in order to permit a defendant to arrange his affairs.

²⁹ In a case involving a driver who is given an immediate hearing to avoid a return which would result in hardship, the driver record, if needed, could perhaps be secured immediately through use of the radio communications system of the state traffic police.

³⁰ Each time a motorist is found to have committed an offense, this fact will be noted in the motorist's driver record. In cases in which no violation is found to have been committed, no entry will be made.

Perhaps the record, when examined in connection with a particular offense, will indicate that the driver is simply not skilled in the operation of an automobile and should attend a driving school; or it may reveal that the driver has an eye condition which can be expected to grow steadily worse as time goes by, and new glasses will accomplish more than a lesson in driving technique. The possibilities of what may be revealed by informed examination of the record are almost limitless. In any event, the hearing officer will be better prepared after the examination to approach the driver in a manner which will be more likely to secure an improvement in his driving performance.

Second, the record will provide the information necessary to assess the appropriate penalty. The assessment of a penalty which is financial only will involve no great problem. The defendant can simply be informed of the amount and told that until it is paid his driver's license will not be returned to him. However, cases which necessitate a penalty involving a license suspension will in some instances give rise to problems of considerable complexity. For example, suppose a non-resident who is travelling alone has been stopped and brought in for an immediate hearing. Suppose further that he is found to have committed an offense for which his license must be suspended. The immediate suspension of his license will, of course, mean that he will be unable to move his car unless he hires a driver. There may be circumstances in which he should be forced to do just that; however, in the ordinary case this would seem to be unnecessarily harsh, and some better solution ought to be available.

A hearing officer can handle such a case (if circumstances indicate no reason for withholding leniency) by informing the driver that his license will be suspended in the particular state for so many days or months, whichever is appropriate, but that the suspension will not go into effect for 24 hours.

Whenever a delayed license suspension is allowed, the hearing officer will stamp across the violator's driver license words to the effect that the license is invalid in the particular state for the designated period of suspension. The license may then be returned to the violator and he may be allowed to proceed on his way. If the same driver is stopped again in the same state, he will hardly be entitled to continued leniency.

The same procedure as that applied to a non-resident can be used in cases of a similar nature involving state residents. The license suspension can be delayed so as to permit the defendant to continue to his home. This can be accomplished by issuing to the defendant a temporary license good for the necessary period of time. In the event that the defendant's home is a long distance from the point of hearing, his license

can be mailed to the hearing officer nearest his home to be given to the licensee at the expiration of the suspension period.

One further point needs to be mentioned concerning penalties: If the plan is to be effective, the offenses of driving without a license or while a license is suspended or revoked must carry severe criminal penalties. These must be administered by judges vigorously and with uniformity. Without the full strength of the courts behind license suspensions, the penalties administered by hearing officers will be ineffectual. Except in the rarest of circumstances, the commission of either of these offenses should result in a jail sentence of at least thirty days, and in many instances an even more severe penalty will probably be in order.³¹

Appeals

From decisions of hearing officers, there will be a right of appeal to the trial court of general jurisdiction. Whether the appeal is limited to the record with the court directed to affirm the decision except in cases of errors of law or lack of substantial evidence to support the findings, or whether the appeal is *de novo* will make no great difference in the theory of the plan. The former is perhaps preferable.

From the decision of the court, the defendant or the state will be entitled to appeal to the appellate court in accordance with the rules governing appeals in other civil actions.

Financing the Plan

The cost of administration of the plan will be paid out of the financial penalties assessed defendants. All funds collected will be paid into the state treasury, and all amounts above the actual expenses of administration will be returned quarterly or semi-annually to the cities and counties in accordance with the ratio of collections.

Since practically all traffic offenses will be removed from recorder-type courts (whether they be municipal, township, or county), it would seem that something less than half as many of these courts will be necessary. This could mean that perhaps in most cities and counties, the net amount received will be above the net amount now being received from the operation of such courts.

³¹ As suggested in note 16 *supra*, a driver whose fundamental attitude is of an actual criminal nature will, in all probability, quickly find himself in the toils of the criminal law, even under this plan. To explain: license suspensions, although for comparatively short terms, will be much more frequent under this plan than at present. A driver who is without respect either for the rights of others or for laws designed to protect them will tend to ignore a license suspension and continue to drive, in which event he will be arrested and made to serve a jail term. Thus, the fact that the plan permits considerate and helpful treatment of non-criminal traffic law violators does not mean that it allows the criminals to escape the treatment they deserve. Indeed, it seems that perhaps criminals will be handled more effectively under this plan than under the present systems.

Possible Results

The results which can be hoped for from a proper administration of the plan are as follows:

1. The classifying as criminal persons who are not criminals except in a technical sense will be discontinued, and the practice of placing these persons in embarrassing and degrading circumstances—a practice which more often than not does the overall cause of justice more harm than good—will no longer be necessary.³²
2. The disposition of traffic cases in an expeditious and convenient fashion without the cumbersome procedures of arrest, preliminary hearing, bail, etc., but with the rights of defendants fully protected by adequate procedural requirements and appeals, will be permitted.
3. Overburdened court dockets—often cluttered with several months' or years' accumulation of traffic cases—will be relieved; a relief which will increase the facility with which other cases involving more serious matters can be processed.
4. The hearing and disposition of traffic cases by officials who have legal training and who are also trained in the techniques of driver improvement—techniques which go to the heart of the problem—will be assured.
5. Driver records, without which punishment in most cases must be administered almost blindly, will be available to the officials charged with the duty of imposing penalties for traffic law violations.
6. The non-uniformity of financial penalties and costs for the commission of similar offenses by drivers tried in different localities—often leading to charges of favoritism and "politics"—will be eliminated.
7. The participation in the deciding of traffic cases by officials operating on a fee basis—a practice condemned even by many of the fee officers themselves—will be stopped.
8. The waste of thousands of law enforcement man-hours spent in court rooms—hours the state can ill afford without securing some return for its money—will be substantially lessened.
9. Courteous and friendly treatment, but treatment with effectiveness guaranteed through the threat of complete immobilization accomplished by license suspension, may be accorded tourists and other non-residents who may be unfamiliar with a strict program of strict traffic law enforcement.

³² See notes 16 and 31 *supra*.

CONCLUSION

A plan which offers such rewarding possibilities would seem to be worthy of serious consideration. However, it will be well to remember that sudden departures from custom are themselves capable of creating many problems when not preceded by thorough study and preparation. Certainly any movement for the adoption of this or any similar plan should be preceded by a comprehensive study of such matters as traffic case loads in the various counties and cities of the state, available facilities for the handling of these case loads, estimated costs and revenues under the plan, and other similar matters which may be expected to bear upon the question of the need or desirability of so drastic a change in the manner of hearing and deciding traffic cases.