

# TRAFFIC COURTS IN THE UNITED STATES

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## INTRODUCTION

Traffic consists three basic elements; vehicle, road, and the human element (Motorist and Pedestrian). The human factor in traffic is the most important of all, since the other two factors have actually been invented and made for the purpose of making life easier and more comfortable for man. Man invented the vehicle in order to be able to reach his destination more quickly and with less effort. From the use of, and the necessity for these vehicles arose the need for roads. Thus was created an ever widening vicious circle : as roads were built, the number of vehicles were increased, which inturn caused the development of more and better roads. As ever better roads allowed for higher speed, the motorcar manufacturors reciprocated by building the vehicles capable of greater speed. Throughout the years of experience, it has been accepted that the road and the vehicle are less important elements of traffic safety than the remaining element, the Human. Most authorities have arrived at the conclusion that whatever engineering improvements and innovation may be made, the human element, the Driver, will still remain the main factor of traffic accidents and the fundamental basic key of the problem.

Once attention became focused on the necessity of accepting the controlling role of the driver, many authorities supported the view that there is a need for enforcement methods together with improvement in the education and training of drivers. Three lines of attack are considered available for the purpose of avoiding accidents : Engineering, Education, Enforcement. These were found necessary for the drivers' own safety and that of the general public. The enforcement is probably the most important of the three and without it any advances through the other two may be nullified. So in this study we wanted to look at the Traffic Courts and its process in the United States.

### I — TRAFFIC COURTS

In the United States, there are few Courts expressly designated as "Traffic Courts". The title Traffic Court, is used to describe any court having authority to decide a traffic case. The State trial courts as a State Court, County Court or Municipal Court have original jurisdiction over traffic cases. Most of the large cities, set aside one or more divisions of their municipal courts for the trial of traffic offenders, (eg. The New York City Traffic Court).

Generally, the trial of most traffic violations occur before justice of the peace or in other local courts or in the division of municipal courts assigned to traffic cases. The justice of the peace and the magistrates comprise the largest group of judges exercising jurisdiction over traffic law violations. The question is whether these municipal courts provide a satisfactory handling of traffic cases than do the State and County Courts. One may say, that these courts are part time tribunals, mostly housed at inconvenient out of the way places, and staffed by a personnel completely untrained in legal matters; the judges are politically appointed or discriminately elected in local elections and financed by the fee system<sup>1</sup>. Recently a new act passed by Congress seems to have the remedy for these objections. On September 9, 1966, Congress enacted the "Highway Safety Act" which includes traffic courts under new

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1) Netherton, Fair trial in Traffic Court, 41 Minn. L. Rev. 577-598, (1957).



uniform standards now being drawn up according to the Act; the States must reapraise and revise the existing traffic court system: Traffic Courts are to be regularly established part of the State Judicial system with fulltime judges and staffs; no traffic court or any of its staff should be financially dependent upon any fee system, fines, costs or other revenue resulting from processing violations of the Motor Vehicle Law<sup>2</sup>. The House Report had indicated that a strict accounting procedure for the collection of fines, fees and cost should be insisted; the report had also pointed out that basic vehicle codes and traffic ordinances should be made uniform throughout the nation<sup>3</sup>.

The function of the Court having to do with traffic offenders can be summed up as the application of corrective measures and effective deterrents to the drivers who ignore the regulations that have been enacted for the safety of both the driver and public. The effectiveness of a traffic court depends upon the fair enforcement of the traffic law<sup>4</sup>. A traffic Court must impress upon a violator the necessity of observing traffic laws to the best of his ability. As early as 1919 in the case of *People v. Seidler*<sup>5</sup>, we find expressed the same idea on the efficiency of traffic law enforcement. The King's County Court of New York declared certain principles of traffic law enforcement and the position of the courts in that area. The case involved the fifth conviction of a prominent physician for speeding. The Court pointed out that :

"...in as much as the defendant was on five prior occasions arrested for similar violations in different parts of our city and by different officers, no claim of prosecution or of improper prosecution can be successfully urged..."

"A physician has no rights upon our highways superiors to that of any other motorist. The law is no respecter of persons and all must bow in obedience to it, and he who violates one does so at his peril".

2) US Congressional and Administrative News 89th Cong. 1966 Public Law 89.564 - Am. Sec. 101 title 23 US Code.

3) H.R: Rep. No: 1700, 89th Cong. (1966).

4) **Kreml, Franklin M.**, Traffic Law Enforcement (1952) SAE Beecroft Memorial Lecture.

5) *People v. Seidler*, 176 NYS 677, 167 Misc. Rep. 67 (1919).

Today, it is well established that all traffic courts must be a part of the judicial machinery which demands respect not only for traffic laws but for the entire enforcement process". But it is argued that, in the past, the public was more or less indifferent to enforcement of the traffic laws. It is clear that any law enforcement without public support is not likely to be effective. Traffic cases are generally the first occasions where most people get into contact with the administration of justice. Therefore it is not wrong to say that the Courts in which traffic cases are heard provide a much larger forum for the people than do all the other Courts. And, from this contact, the people gain experience and certain impressions, and acquire an idea of law enforcement in general. In 1966, in New York, 4,147,000 traffic cases were heard. There had been an increase of more than 480,000 over 1965. In addition the courts collected 3,700,000 Dollars more in fines in 1966, than in the year of 1965. These figures show us the heavy work of the Courts dealing with the traffic laws.

The question in our mind is whether the general public really has so little respect for the traffic courts<sup>7</sup>. George Warren writes that "...the public now demands positive action to meet this situation and people generally have become increasingly dissatisfied with the administration of traffic laws"<sup>8</sup>. This problem was pointed out by certain writers in the United States from the very beginning. An author mentioned of "a growing bitterness among our millions of motor car owners who have come to resent and ridicule an outrageous system of traffic law enforcement which violates almost every American Principle of Justice and equity"<sup>9</sup>. Every traffic offender, as we said above, is entitled to all procedural guaranties and constitutional safeguards before the traffic courts. But, can a judge

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6) **Economos, J.**, Traffic Court Procedure and Administration, Chicago, 1961, pp. 6

7) **Fisher, Edward**; People's Court, the Northwestern University Traffic Institute, Evanston, 111. 1947 pp. 1.

8) **Warren**, Traffic Courts Boston, 1942, pp. 7.

9) **Burgess, R. L.**, "Can you get a square deal in a Traffic Court", American Magazine, Dec. 1932, pp. 11. Quoted from Fisher, "People's Court pp. 2.



who always has a heavy trial schedule, extend such guaranties<sup>10</sup>? In the large cities, the judge is supposed to try a traffic violation case in a very short time, in no more than two or three minutes. In the courts we have visited in New York, we saw defendants who had been waiting in line for hours before they were heard. In the noisy and crowded court room it was difficult to find the "Justice Reining Supreme". One may say that such administration of law does not bring respect for the law. Such procedure asks for the impossible from the traffic judge. "The excessive speed in the court room, endangers justice, and some times is more dangerous than the excessive speed on the highways"<sup>11</sup>.

Since most traffic violations, committed by the average citizen, are criminal only in a technical sense, it is possible to eliminate details, technicalities and the procedures intended for more complex situations, without injury to the rights of the defendants<sup>12</sup>. This observation of course is not meant to apply to the enforcement of certain offenses such as hit-and-run, driving under the influence of alcohol or drugs; and reckless driving which if it results in death, constitutes manslaughter or murder, as the case may be. But the more common violations of the motor vehicle laws not included in the above group such as running through stop sign, or signal, over time parking, exceeding speed limit, etc. constitute abuse of driving rights, hence they should be reclassified under the title of "Administrative misdemeanors". The violations within the later group can be tried before administrative tribunals without violating the rights of the defendant. A plan, published for handling the traffic cases, proposes the use of special administrative tribunals for all traffic violations except for certain serious charges. Under such system, judicial appeal would lie from the administrative decision. Specially trained hearing officers would be located at various con-

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10) In the City of New York, an average of 345,000 summonses are issued each month in 1966.

11) **Mueller**, Criminal law and Procedure in the field of Highways Traffic, American experience in the Penal Regulation of Road Traffic, a paper submitted to the 6th International Congress of Comparative Law, Hambourg, Germany, July 30 August 4, 1962 pp. 5.

12) **Johnson**, A plan for the hearing and deciding of Traffic Cases, 33. NC L. Rev. (1954) pp. 1-16.

venient places throughout the State. Procedure would be based on the rules for quasi-judicial proceedings before administrative tribunals. Penalties would be meted out with care to provide for the maximum educational or rehabilitative effect on the driver<sup>13</sup>. In the legislative field, in the state of New York, a proposal was made late in 1966 by the joint legislative Committee on Court Reorganization<sup>14a</sup> to take all traffic cases out of the courts and place them under the jurisdiction of an administrative agency such as the State Bureau of Motor Vehicles. We may say that to take the traffic loads out of the Courts would be a good way to enforce the traffic law. We should like to go even further; and be in favor of giving power to impose penalties (solely in the form of money penalties) to the traffic police or the agencies in certain cases, that of petty offenses arising out of technical violations of the laws and regulations governing the traffic law. The legislative body must describe said petty offenses (or administrative misdemeanors) and determine the limits of the fine to be imposed by the administrative agents. However, the imposing of penalties may be reviewed by the Courts. We think that, in the United States, it is noticeable that the enforcement of the traffic laws has reached the saturation point. Police cruisers are to be found on every road; the police patrols on the highways are as a rule, in unmarked cars; radar is likely to have been installed behind every curve. Radio, the networks, planes, and helicopters are all in the service of traffic law enforcement. Therefore, quick penalization of petty violations of the traffic regulations should be more effective than it is in the existing situation; and should prevent wasting the time and reputation of the Administration of Justice. One may quarrel with this proposition and say that to take the traffic cases out of the courts would endanger the constitutional rights and procedural safeguards of the defendants: the imposition of a sanction of money penalty by administrative officers is not compatible by the basic principle on which American Administrative Law is grounded. According to the term used by Justice Cardozo it will become a "tyranny of labels". Imposition of penalties is conventionally thought to bear the label "Judicial keep-

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13) Ibid.

14a) See World Journal Tribune, Nov. 15, 1966 pp. 6.



out"<sup>14b</sup>. The same thought is defended by Professor Schwartz, saying that "the imposition of a money penalty is, with us, a judicial not administrative function"<sup>15</sup>.

The answer given to this question by Professor Gellhorn is affirmative<sup>16</sup>. He writes the following good reasons for this answer: "What does deny them to power is not the Constitution; it is rather a barrier compounded of tradition, a little jealousy, judicial lack of confidence in the wisdom and probity of administrative agents, and the judges unwillingness to leave to the Legislators the final measuring of individual interest as against public interest in aggressive (and therefore some time oppressive) law application"<sup>17</sup>. We do not hesitate in following this idea. Most of the Statutes which are in force in the United States have recognized the administrative imposition of money penalty. Especially in the field of Tax Law, the administrative imposition of money penalty has been authorized in Tax Statutes. In the *Helvering v. Mitchell*<sup>18</sup> the Sup-

14b) **Gellhorn, W.**, *Administrative Law Cases and Comments*, 2 ed. New York, 1947, pp. 323.

15) **Schwartz**, *Survey of New York Administrative Law*, 27 NYU. Law Rev. (1952), pp: 928; in a similar matter N. Y. Legislator in chapter 595 of 1952 Laws, authorized the superintendent of insurance after notice and hearing, to impose a penalty not exceeding 1.000 Dollars for willful violation of provisions of the insurance law relating to fillings. The statute also provides that the superintendent's order imposing the fine is reviewable by the Courts. In relation to this statute Profesor Schwartz writes in his article that "it is difficult to imagine a statutory provision more repugnant to the basic principles upon which our administrative law is grounded. It violates the fundemental rule that the imposition of a money penalty is, with us, a judicial, not an administrative function. The danger inherent in allowing administrative authority to extend to the imposition of monetary penalties seems clear and because of them, statutes like the New York Law, under discussion, are comparatively rare the usual thing being for the legislature itself to prescribe that the infraction of administrative rules or orders shall be subject to a stated penalty, a breach of the act. This principle is said to date back to Stuart times and the objection to penalties imposed by royal proclamation". **Schwartz**, *Survey of New York Law Administrative Law* 27 NYU L. Rev. pp. 928 (1952).

16) **Gellhorn**, *Ibid*, pp. 348.

17) **Gellhorn**, *Ibid*, pp. 348.

reme Court upheld the imposition of a fifty percent fraud penalty upon tax payer who had been prosecuted upon and acquitted of charges that he willfully attempted to evade a proper income tax. The Court said that :

"They are provided primarily as a safeguard for the protection of the revenue and to reimburse the Government for the heavy expense of investigation and the loss resulting from the taxpayers fund".

On the other hand, there are also circumstances in which the legislature has recognized the imposition of penalties by the administrative authorities. These practices have been approved by the Court; therefore it may be presumed that the constitutionality of the practice is well recognized<sup>19</sup>. Among other examples we would like to emphasize the provision of the Uniform Vehicle Code providing for the revocation or suspension of driver's licenses. In several States, the Motor Vehicle Departments are authorized to suspend a license upon the records and other sufficient evidence on file<sup>20</sup>. For example, in New York, a Court conviction shall not be necessary to sustain any suspension or revocation; and revocation and suspension are deemed an administrative act reviewable by the Supreme Court<sup>21</sup>. In some circumstances there is no difference between this penalty and the penalties under the form of money fine; (it is probable that the former one may be more severe than the latter), it will serve the same purpose as money penalty. For instance, the suspension of the license of a truck driver for two weeks will cost him his salary as a truck driver<sup>22</sup>. Therefore, the idea which refuses to give power to the administrative offices, to impose money penalties, is not acceptable<sup>23</sup>. We do not see any

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18) *Helvering v. Mitchell*, 303 US, 391 (1938).

19) **Gellhorn, W.**, *Supra* note 14, pp. 337.

20) See : *Suspension and revocation of Drivers' Licenses* (Automotive Safety Foundation) revised ed., Washington, 1966, pp. 30.

21) *Ibid*, pp. 34.

22) **Gellhorn, W.**, *Supra* note 14, pp. 339.

23) In a recent case, *Deitchman v. Kennedy*, 162 N.Y.S. 2d 127 5. Misc 2d 680 (1957) the New York Court decided that "a taxi driver's license is a property right which may not be interfered with by the exercise of statutory authority except upon proper notice and after a hearing"



inconvenience to use the administrative sanctions for administrative misdemeanors. Even if the traffic violations were not considered as a matter already or typically committed to administrative control, there would have still been no reason to recognize them to impose the penalties for disorderly conduct such as violations of the traffic regulations which must be considered as anti-social behaviour. "The general purpose of the laws regulating traffic is not primarily to protect fast drivers from the consequences of his folly; rather the purpose is to protect the life and property of others lawfully using highways", said the New York Court in one of the very recent decisions<sup>24</sup>. One who violates a statute promulgated for the protection of life or property is willing to risk a danger which the law seeks to prevent. Therefore, these administrative sanctions will operate not only in a protective way after misconduct has occurred, but also in a deterrent manner to prevent such misconduct<sup>25</sup>.

We may suggest that such procedure would instill respect for the law. Certainly the law should be respected by each and every citizen.

We assume that only serious offenses such as driving while intoxicated, operating without license, reckless driving, auto-homicide, or manslaughter etc. would remain under the jurisdiction of the Court. Such offenses are actually punished by heavy sanctions such as imprisonment, fine, or revocation of the drivers license and are regarded as crimes rather than simple traffic infractions. According to this system, most traffic violations would be reclassified under "administrative misdemeanors" instead of under "misdemeanors under the penal code".

It is well known that "Fairness" is the greatest attribute of the Anglo-American trial procedure. But in the course of our study, we have found that the writers all discuss the unfairness of the traffic Courts. Why? Because, on one hand, in a traffic case trial, the courts have been compelled by circumstances to modify many of the procedural safeguards that are applied in the trial of other criminal cases; on the other hand, it is generally known that tax and traffic laws do not enjoy the full support of the American com-

24) *People v. Staples*, 162 N.Y.S. 2d 131 (1966).

25) *Gellhorn, W.*, *Supra* Note 14, pp. 323.

munity. Ninety per cent of the people see themselves as probable traffic violators. The drivers disregard the traffic courts and prefer to pay the fine by unjustifiably pleading guilty in the court or in the violations bureau. Under these circumstances it is in vain to expect from the public a little respect for traffic law enforcement.

Today, the traffic laws in force bring too many persons before the traffic court on charges that do not actually involve any clear and present danger to the community but are rather merely technical violations of the law. Consequently the courts are placed in the position of working to further disrespect on the part of traffic participants instead of performing the judicial function of trying and punishing persons who by their conduct have endangered the public safety<sup>26</sup>. Therefore, if we could take these minor violations out of the courts, the load of the courts would be lighter and this could be better assured fair trials and effectiveness of law enforcement.

The corrective role of the traffic courts has a very important place in the treatment of traffic violations. During the proceedings in the traffic court, the judge assumes the role of an educator. It is highly recommended that the traffic judge should attempt to give information to his court room audience and thereby promote safe driving and the observance of traffic laws<sup>27</sup>. At the same time, the traffic courts should also combine punishment with rehabilitation. Certain courts utilize the services of administrative agencies of the local government working in the medical field, eg. the Recorder's Court in Detroit makes its decisions in accordance with the recommendations of the psychiatric clinics where an examination of the referrals is made following conviction and prior to sentencing. The Court sends the defendant to the clinic for examination in cases where the defendant's records of past convictions or accidents give reason to suspect the presence of mental or emotional involvement<sup>28</sup>.

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26) **Netherton**, Fair Trial in Traffic Court 41 Minn. L. Rev. 577, 597, 598.

27) **Macelwane**, The Traffic Court, the most important in our system. ABAJ, vol. 43, 1957, pp. 323.

28) See **Canty**, "The Structure and function of the Psychopatic Clinic, Recorder's Court, Detroit, Michigan 14, Ohio St. L. J., 1953, pp. 142-153.



"Traffic Schools" or "Violator's Schools" are other rehabilitative devices used by the traffic courts. There are also non-legal devices dealing with research into the causes of accidents and the psychology of driving. The usefulness of this research to both the court and the driver licencing agency of the State is undeniable<sup>29</sup>.

The point systems utilized by many motor vehicle departments in the exercise of their power to suspend or revoke driving rights has also a large effect on the educative and rehabilitative function of the traffic courts<sup>30</sup>.

## II — TRAFFIC COURT PROCEDURE

In general, the principles applicable to the prosecution of traffic cases are the same principles which govern criminal cases. So the rules of evidence, the legal requirements as to filling of complaints and information, and other basic principles of criminal procedure dominate in traffic cases. But the Criminal Law procedure lacks the elasticity necessary in the handling of traffic cases. "Since the average traffic violation does not present the complexities of the usual criminal cases, it is possible to eliminate details technicalities and procedures intended for more involved situations without injury to the rights of defendant"<sup>31</sup>. Most of the traffic offenses are considered as traffic infractions, (minor in character) so that, from the practical point of view, court procedure seems unnecessary. So far, few attempts have been, made to introduce the necessary reforms in Traffic Court procedure<sup>32</sup>. Certainly it would be better were traffic cases to be separated from the other criminal cases.

29) *Netherton*, supra note 26, pp. 597.

30) In New York, the Dept. of Motor Vehicles uses a point system to identify and control persistent violators of traffic laws. Point values assigned to various violations but parking and vehicle equipment violations do not count. An accumulation of points within a 2 years period results in the following action: 6 points warning letter, 8 or 9 points summon to a driver improvement clinic, 10 or more formal hearing with possible suspension or revocation of license.

31) *Economos*, Traffic Court Procedure and Administration Chicago, 1961, pp. 29.

32) *Ibid.*

a) **Pre-Court Procedure :**

i) *Enforcement Agencies* : In each State, there is a department of the State Government headed by a commissioner who is charged with enforcing laws, regulating the operation of vehicle. The New York State Department of Motor Vehicles headed by a commissioner<sup>33</sup> deals with the enforcing of traffic laws and the use of highways<sup>34</sup>. The peace officers and the police officers enforce the "Vehicle and Traffic Law" and other laws pertaining to the use and operation of vehicles on public highways<sup>35</sup>. Law enforcement agencies generally have discretionary power. The theory is that by analysing the time place and type of violation future accidents can be predicted and to a great extent prevented by proper enforcement. Certain writers blame the traffic agencies for arbitrary enforcement of the law; eg. law enforcement agencies commonly allow drivers suspected of violating the speed limits a tolerance of five miles per hour. This creates an undesirable attitude on the part of the driver who now obeys an arbitrary act of the officer instead of the law<sup>36</sup>. The traffic law demands enforcement without any tolerance<sup>37</sup>.

ii) *Traffic Citation* : There are three ways to get the traffic violator into court : arrest, ticket, and summon.

*Arrest* : In certain situations, the officer has the power to arrest a driver violating traffic regulations and take him before a magistrate without unnecessary delay. For instance, according to the New York Motor Vehicle Law, a police officer may, without warrant, arrest a driver violating section 1192 (drunk driving) and section 601-602 (hit-and-run). If said violation was committed in his presence or if the officer has reasonable cause to believe that the violation was committed by this driver. Ordinarily the officer releases the driver from police quarters after the latter's appearing before judge or the person authorized to set bail.

33) N. Y. Vehicle and Traffic Law sec. 1610.

34) N. Y. Vehicle and Traffic Law, sec. 1630.

35) N.Y. Vehicle and Traffic Law, sec. 423.

36) **Elder, Hayes.**, Police Discretion and Traffic Law Enforcement. Comment, Washington Law Rev. 1964, pp. 840-852.

37) *Ibid*, pp: 843.



The *ticket* is an order from the police department. No penalty is automatically involved in failure to obey the ticket. "A traffic ticket notifies the party served there with in effect that the officer signing the ticket intends to submit a complaint to the court at a certain time and place, and that if the party served does not appear, then the court will be requested to issue a warrant for his arrest"<sup>38</sup>.

The *summons* is an order issued by the court; it can be enforced by contempt proceeding. In court, such documents become the entire basis of prosecution.

The form of complaint used in the different States was criticized by the traffic Judges. Consequently a Model Uniform Traffic citation widely publicized by the American Bar Association incorporated features of the standard form used in New Jersey and Michigan<sup>39</sup>. At the present time, an Uniform Traffic Complaint, and traffic ticket has been accepted in most of the States<sup>40</sup>. The State of New York has adopted by order of the Commissioner of Motor Vehicles under statutory authority a uniform traffic summons. But the commission does not include a complaint as any part there of. In the case *People v. Scott*, when the issue was wether the uniform traffic summons was a sufficient complaint the Court decided that :

"the Uniform Traffic ticket is merely a notice to appear in a given court on a given day to be then charged with a specific crime; it is not a sufficient information to be used for pleading"<sup>41</sup>.

A duplicate copy of the notice to appear is filed with the Court by the issuing officers<sup>42</sup>. The complaint portion of the Uniform

38) *People v. Preble* 240 NYS 2d 845 (1963).

39) American Bar Association, for the sample of the Uniform Traffic Ticket and Complaint published by ABA, see **Economos**, Traffic Court Procedure, pp. 169.

40) **Economos**, *Ibid*, pp. 22.

41) *People v. Scott* 3 NY 2d 148, 164 NYS 2d 707 (1957).

42) American Bar Association uniform traffic ticket and complaint and model rules governing procedure in traffic cases 1-6-(1958) Rule 1 : 31 (complaint or information and summons; Form (a) (Form) In traffic cases the complaint or information and complaint shall be in the form known as the Uniform Traffic Ticket and Complaint substantially the same as set out in the appendix of forms there to.

Traffic Ticket and Complaint informs the accused of the nature of the charged against him, and a court copy is prepared to serve as a docket. The uniform traffic ticket and complaint lists six violations as the main causes of accidents and eight conditions which may increase the seriousness of the violation<sup>43</sup>. It is maintained that this breakdown enables the judge to determine accurately the penalty which would properly corresponds to the degree of the hazard created<sup>44</sup>.

iii) *Bail Posting and Forfeiture* : Historically bail has been required in criminal cases to insure the defendant's presence at trial without physically detaining him. The spirit of the procedure is to enable the defendant to stay out of jail until the trial has found him guilty. Bail in traffic cases was also accepted to insure the the defendant's appearing in court. But in some jurisdictions the use of the bail device in traffic cases is inconsistent with its use in criminal cases because in these certain jurisdictions the judge is allowed, in his discretion, to accept bail forfeiture and consider the case closed<sup>45</sup>. We may say that in certain offenses such as parking, non moving, violations where appearance before a court is needless this system is an excellent way to enforce the law. But on the other hand, bail forfeiture defeats even its present purpose of conveniently promoting public welfare when it is premitted in cases which involve serious threat to safety<sup>46</sup>.

*The Violations Bureau* : To pay the penalty for having violated a law without having to appear in court has become an important element in American Traffic Court practice. This is an entirely new practice in criminal law procedure. Today it is an out growth of

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43) The six violations which are main causes of accidents are : speeding, improper left turn, improper right turn, disobeyed traffic signals, disobeyed stop sign, improper passing and lane usage, and light conditions; which may increase the seriousness of the violation are : slippery pavement; darkness; other traffic present caused person to dodge; just missed accidents; type of an accident; type of area; type of highway.

44) Economos, supra note 40, pp: 16-21.

45) See., Calif. Vehicle Code, sec. 40511.

46) California Traffic Law Administration, pp. 400, 12 Stand. Law Rev. (1960).



bail forfeiture<sup>47</sup>. The Model Rules governing procedure in traffic cases sets out the authority for such action on the part of the judge. (1-3-7 Traffic Court Violations Bureau (a) Appointment and Functions) :

"Any court when it determines that the efficient disposition of its business and the convenience of persons charged so requires, may establish a Traffic Court Violations Bureau and constitute the clerk of the court or any other appropriate official within the jurisdiction in which the court is held as a violations clerk for the Traffic Court Violation Bureau. The violations clerk shall accept written appearance waiver of trial plea of guilty and payment of fine and costs limitations hereinafter prescribed. The violations clerk shall serve under the direction and control of the court appointing him"<sup>48</sup>.

According to this article, the institution of a violations Bureau is based upon the idea of a written plea and waiver. As the assessing of fines is a judicial act, the fines are fixed by the court and not left to the discretion of clerks or of officials who are not legally qualified as judicial officials. The repeater can be a problem for the Violation Bureau, Especially in the violation of parking regulations where the violator may feel that he is simply making an occasional payment in return for a privilege he is taking, that is not accorded to other citizens<sup>49</sup>.

*Payment by Mail* : Mail payment is accepted on non-mandatory court cases. As a practical matter, the mail payment avoids the effective use of waiver and plea system that there is not much difference between mail payments and the system that we favor, the collecting of fines on the spot by the police. The mail payments may cause certain difficulties. In 1942 Warren wrote that the mail payments "prevent the marking of driver's licenses when that is required by law; and make impossible the graduation of fines for

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47) Warren in his book called this institution as "violation bureaus" or "cafeteria courts", Traffic Courts, pp: 56-65.

48) **Economos**, supra note 40, pp. 40.

49) **Warren**, Traffic Courts, pp: 64; **Economos**, Traffic Court Procedure, pp. 49.

repeaters"<sup>50</sup>. Today, some of these difficulties will be eliminated by using computers in the traffic law enforcement<sup>51</sup>.

#### b) Trial Procedure

Generally, the accused in response to a traffic summons, must appear in court. The accused must be informed of the charge against him and be advised of his procedural rights, specifically guaranteed to him by Statute or Constitution<sup>52</sup>: the right to counsel the right to obtain a continuance, the right to be informed of the charge against him; the right to plea guilty or not guilty, the right to call witnesses, the right to demand a trial either by a court or by a jury without additional expense to himself. Although the defendant is given a copy of the citation, the law requires that the charge be read to the defendant<sup>53</sup>. Usually the judge reads the citation to him and requests the plea. But in most courts which have very heavy loads, the judges read the names of the defendants and instruct them collectively, and then request their reply. But, at the same time, the defendant has the right to be informed of the meaning and consequences of the plea. The defendant must also be informed of his rights in the possible future proceeding<sup>54</sup>.

In the first part of the present century, the "Plea nolo contendere", which is the ancient practice of criminal law, was in-

50) Warren, *Ibid*, pp. 65.

51) *Automobiles, Computers and Tomorrow*, N.Y.S. Dept. of M.V. 1967. In the State of New York the new computer system will be installed sometime in 1968 motor vehicle transaction which now sometimes require up to 2 or 3 weeks can't be handled in a matter of second.

52) ABA and the Traffic Institute, Northwestern University. *Judge and Prosecutor in Traffic Court*, 1951, 80.

53) It is often assumed that the defendant is aware of the charge against him, but such an assumption is unwarranted for the citation itself may not have afforded adequate notice.

54) *In Re Sheridan*, 230 ACA 406, 409, 410 (1964) "no denial of constitutional rights was found where the defendants were assembled in the court room for the announced purpose of being advised of their rights, and that advice was read to them; by the clerk at the behest and in the presence of the judge... No constitutional defect appears thus far in the proceedings".



corporated, by certain state legislatures, into the criminal codes, alongside the pleas of "guilty" or "not guilty". This plea may not be considered an admission of guilt<sup>55</sup>. This kind of plea is desirable for defendants charged with traffic violations arising out of motor vehicle accident<sup>56</sup>. In this case, the plea of *nolo contendere* offers an effective alternative. While it is an implied admission of guilt, it has no effect in other cases such as in a civil damage suit; its only effect is on the particular proceedings in which it is made.

The plea of guilty takes an important place in traffic court procedure. The motoriste usually prefer to plea guilty and take the "pay it and forget it" attitude. They are generally disinclined either to be tried or to serve as witnesses in traffic court. Particularly in traffic cases, mandatory suspension or driving rights may be involved in addition to the usual consequences of a plea of guilty as it relates to conviction. Therefore, in such cases, the consequences of the plea of guilty requires special explanation. Failure to advise of the consequences of a plea of guilty when it involves the mandatory suspension of the defendant's license to drive constitutes a good reason for the higher courts to reverse the conviction<sup>57</sup>.

One author warned of the individual's rights in traffic courts. He writes : "The new policy dictates : do not apprise the defendant of his right to proffer defenses, or to plea not guilty. Forbid the traffic judge to listen to the defendant's excuse. The traffic violator must learn that he has no rights"<sup>58</sup>. I think that writer represents very extreme ideas in this particular matter. "Court" and a "Traffic violator has no rights" are two entirely different statements. They do not jibe. As previously noted, something must be done to eliminate the details and technicalities in the current procedure. But it must be done without injury to the rights of the defendant.

55) See *Winesett v. Scheidt* 239 NC 190, 79 SE 2d 501 (1954).

56) Plea of *nolo contendere* in traffic cases, *Traffic Digest and Review*, March 1955.

57) See : **Netherton**, Fair Trial in Traffic Court, 41 *Minn. L. Rev.* 1956, pp. 591 "Criminal Court would set aside defendant's plea of guilty to a charge of speeding in view of fact that he would lose his driver's license and his livelihood dependent on its retention". *People v. McClusly* 268 NYS 2d 209, (1966).

58) **Mueller**, How to increase traffic fatalities, 60 *Colum. L. Rev.* 1960, pp. 964.

c) **Trial Personnel :**

i) *Judge* : The procedural and administrative work of every traffic court, primarily depends on the conduct of the judge. The judges of the traffic courts are supposed to have a high degree of acquaintanceship with the traffic problem. The traffic conferences presently held at various levels and locations attempt to realize this goal<sup>59</sup>. However, it was noticed that approximately half of the justice court judges have never attended these conferences<sup>60</sup>.

ii) *Prosecutor* : In the criminal cases the prosecutor participates in the trial on the part of the people. However, this is not a common practice in traffic cases<sup>61</sup>. The presence of a prosecutor in traffic cases depends upon the seriousness of the charge, or whether the defendant is represented by a counsel<sup>62</sup>. However, the presence of the prosecutor in traffic cases, has been found helpful. In addition, in presenting of the case for the people, the prosecutor may help the court in easing the burdens<sup>63</sup>. In Practice, the presence of prosecutors in traffic cases other than reckless driving, drunken driving, and hit-and-run charges is limited by the fact that there are not enough prosecutors available<sup>64</sup>.

iii) *Defense Counsel* : Defendants, in traffic cases, are rarely represented by a counsel. The presence of a counsel depends upon the seriousness of the charge as of the presence of the prosecutor; when a serious violation is charged, or when the charge may result the suspension of the license, or in the jury trial or an accident case which may constitute a basis for a later civil suit<sup>65</sup>. The practical explanation of this situation was pointed out by Warren : "The fine assessed against the average traffic violator is hardly as large as a subminimum payment to an attorney for the time he would

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59) See : Traffic Program ABA "Traffic Court Justice" vol. 8, Jan. 1967 No: 1.

60) California Traffic Law Administration 12, Stand. L. Rev. 1960, Appendix, pp. 435.

61) Warren, Traffic Courts, pp. 97.

62) Calif. Traffic Law Administration, 12 Stand. L. Rev., 1960, pp. 411.

63) But see. : Warren, Traffic Courts, pp. 105-106.

64) Warren, Ibid, pp. 98-99.

65) Warren, Ibid, pp. 106.



have to spend in that court"<sup>66</sup>. We think that this reason is still valid and will continue to be so in traffic cases<sup>67</sup>.

The problem of the right to counsel of an indigent traffic defendant also involves in the traffic cases. One may say that since a defense attorney potentially assures protection of defendants rights, arguably the services of a public defender should be made available to indigent traffic defendants<sup>68</sup>. In *Re Johnson*, the right to counsel was extended to an accused subject to multiple charges for various traffic offenses<sup>69</sup>. Several lower courts appoint junior members of the Bar to defend the indigent defendant charged by serious traffic offenses<sup>70</sup>.

iv) *Officer-witness* : Police officers appearing as witnesses in traffic cases were observed in most instances, to be appropriately responsive, and seemed to testify without any prejudice toward the defendant<sup>71</sup>. This conduct relies on the proper training of the police officers; so that they can carry out their duty and learn how to testify in court. Police officers are as responsible as the traffic judge and the prosecutor for inculcating a respect for law in the people. In this regard one may suggest that to request a police officer to act as a prosecutor in traffic case would be a device to eliminate the details and technicalities of the procedure currently applying in the other criminal cases<sup>72</sup>. But this idea was refused by saying that the prosecution "is not the function of a police officer and it creates a very bad feeling between the police

66) **Warren**, *Traffic Courts*, pp: 106 - "Even if court failed to tell defendant of his right to counsel before he pleaded guilty to charge of speeding, such failure would not require the reopening of the traffic infraction". *People v. McClushy* 268 NYS 209 (1966).

68) *California Traffic Law Administration*, pp. 412.

69) *In Re Johnson*, 398 P. 2d 420 (1965).

70) **Mars**, *Public Defenders*, 46 JCL and P. S. 190-200 (1955).

71) **Warren**, *Traffic Courts* pp: 40-41; *California Traffic Law Administration* 12 *Stand. L. Rev.* 1960 appendix, pp: 435.

72) *State v. Urban*, 98 N.H. 346, 100 A. 2d 897 (1953) "The State as the embodiment of sovereignty can act only through its agents. It is not to be limited in any of its prerogatives by a statute, which does not include it by express words. In prosecuting the defendant, the chief of police acted solely in behalf of the State. His action was not the kind which the statute was designed to prevent".

officer and the public at large; if they feel that the officer is departing from his role as an objective gatherer of the facts and a witness testifying as to those facts and turning himself into a prosecutor desiring to obtain a conviction"<sup>73</sup>.

v) *Jury* : A great number of important criminal cases are tried before jury in the United States. Since all rules of criminal law are applicable to traffic cases, the jury system is also valid there in<sup>74</sup>. Jury is in common use in the trial of such cases as reckless driving, hit-and-run, and drunk driving. In all jurisdictions jury trials in traffic cases are obtainable upon the demand of the defendant. Most traffic defendants waive this right. Nevertheless there has been a noticeable increase in the number of jury trials requested before the California courts<sup>75</sup>. The increase is thought to be directly related to the Department of Motor Vehicles policy of suspending licenses automatically upon convictions for certain violations. Therefore, one may say that the request for jury trials in traffic cases increase proportionately with the seriousness of the consequences of conviction.

The selection of traffic jurors follows the same procedure as of the criminal cases' jurors. They are subject to the same rights of peremptory challenge and challenge for cause in "voir dire" to which all other criminal jurors must submit. The judge should follow all the steps required by statute and adopt additional steps guaranteeing that the right to trial by jury is fully protected. It is **arguable** that the convenience and benefit to the public resulting from a prompt and inexpensive trial of minor traffic violations outweigh a number of practical disadvantages. The combined expense to the public of paying a jury, a judge and a prosecutor for the purpose of deciding a minor traffic case further detracts from the desirability of an absolute right to jury trial in traffic cases<sup>76</sup>.

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73) Macelwane, *The Traffic Court*, the most important in our system ABA Journal vol. 43, 1957, pp. 323.

74) Macelwane, *supra* note 73, pp. 324.

75) See : California Traffic Law Administration, 12 Stand. L. Rev., 1960, Appendix, p. 438.

76) Warren, *Traffic Courts* pp. 74-75.



The elimination of the jury system in the traffic cases involves a problem of constitutional law. A defendant's right to trial by jury in criminal cases, is safeguarded by constitutional provisions in all States, and in the District of Columbia by the Federal Constitution.

At Common Law there have been dicta to the effect that the legislature may dispense with the right to trial by jury in "petty offenses"; vagrancy, drunkenness and public disorder are not triable by jury<sup>77</sup>. Since traffic violations as presently conceived, were non-existent at Common Law, it is arguable that minor traffic violations could, by analogy, be brought within the definition of "petty offenses". The New Jersey Court has held that the Common Law analogy justifies denial of jury trial to an individual charged with driving while intoxicated<sup>78</sup>. The United States Supreme Court reviewing the decision of the Federal Court of Appeals approved the New Jersey decision<sup>79</sup>, but held that a jury trial cannot be denied when an individual is charged with reckless driving<sup>80</sup>. The Supreme Court distinguished between the two offenses on the ground that reckless driving is a serious offense and should be characterized as criminal, while drunk driving should be characterized as a petty offense since actual danger to the public safety is not a necessary element<sup>81</sup>. On the basis of this distinction many moving violations including drunk driving and some speeding offenses, might be characterized as "petty offenses". Since under the wording of the statutes the creation of an "actual hazard" is not a necessary element.

The New York Law distinguishes traffic infractions from other offenses: the right to jury trial was denied for traffic violator charged by a traffic infraction under section 155 of the Motor Vehicle and Traffic Law. In this matter the New York Court decided that:

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77) See, in re Fife, 110 Calif. 8-9-10 (1895) dictum.

78) State v. Rodgers 91 NJL 212 (1917); State v. Ray 4 N.J. Misc. 493, 133 Atl. 486 (1926); Klinges v. Court of Common Pleas, 4 NJ Misc. 7, 130 Atl. 601 1925.

79) District court of Columbia v. Colts 282 US. 63, 1930.

80) Ibid, 73.

81) State v. Rodgers, 91 NJL 212, 102 Atl. 433 (1917).

"Under city charter providing that prosecutions for violation of ordinances are tried exactly as misdemeanors are tried under statute and directing trial by jury when demand, and under the Code of Criminal Procedure sec. 702-703, directing that a demand for jury trial be granted on trial of misdemeanor, a defendant charged with violating speed ordinance was entitled on plea of not guilty to have his demand for jury trial granted"<sup>82</sup>.

Certainly, the disadvantage of jury trials in certain traffic cases can be argued for some modifications of this right<sup>83</sup>. The right could be allowed to remain in full force in those cases involving felonies those where willful or wanton misconduct is required (reckless driving) and those which involve bodily injury or serious damage to property. In the remaining cases, the right could be eliminated or modified as previously suggested.

#### CONCLUSION

As currently administered, traffic trials seem to deviate from the generally required Criminal trial procedures. However, in general this deviation appears to produce no substantial prejudice to the traffic defendant since whatever procedural laxity does exist is often exercised in his favor. On the other hand, the conviction treatment administered to a defendant leaves much to be desired because of its lack of certainty and consistency and also because of its inadequacy in deterring further violations. As mentioned above, it has been suggested that the entire field of traffic law be placed under the jurisdiction of an administrative agency to remedy the asserted shortcomings of judicial traffic law enforcement. This procedure might be quite desirable if sufficient provision were made for hearing procedures consistent with due process of law, and for a variety of remedies adequate to deal effec-

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82) *City of Rochester v. Falk*, 7 NYS 2d 517 (1938); *People v. Propp*, 15 NYS 2d 83 (1939), "Subdivision 29 of former section 2 providing that no jury should be allowed for traffic infractions, would be assumed to be constitutional, in absence of direct question as to the constitutionality thereof".

83) *Warren*, Traffic Courts 74-72.



tively and on an individualized basis with the varying fact situations. But the establishment of such an agency would require a complete revision of the existing Vehicle Codes. Such revisions would be valid in the system we suggested above; namely the collection of fines, for certain violations by the traffic police. Hence, this system would also require certain changes in the current Motor Vehicle Laws.

First of all, there remains to be considered the question of whether serious doubts of constitutionality would be raised where the Administrative agents to have the power to impose and to collect penalties. We have already discussed the imposition of penalties by administrative agents. Here we shall discuss the collection of penalties on the spot by the traffic agents. One may argue that such a procedure is against the "due process" clause of the 14th Amendment of the Constitution. "Due process of Law" means "not so much that a specific mode of procedure shall be followed as that, in that procedure, certain fundamental principles looking to the protection of the individual against oppression and injustice shall be followed"<sup>84</sup>.

The State has the sovereign rights to protect public health, safety, and morals; the State legislature has wide discretion in determining what is, and what is not necessary in the exercise of police power to protect the public<sup>85</sup>. In this case giving to the police the power to impose penalties stays within the limit of the Police power of the State. Although it is fundamental to the idea of due process of law that an individual shall not have his legal rights finally determined without a notice that such rights are to be examined and determined together with an opportunity to be heard, such prior notice is not feasible because of the urgency of the public need, and even more for practical reasons of administrative efficiency or effectiveness. It is held that the requirements of due process are satisfied if opportunity is later given to the individual adversely affected to test the validity of the administrative action on appeal.

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84) Willoughby, Westel W., Principles of the Constitutional Law of the United States, New York, 1938.

85) City of el Paso v. Simmons, 379 US 497-508-509.

to superior administrative authorities, or on appeal to the courts or both<sup>86</sup>.

Necessity for speedy action is created by different factors. Protection of public health and safety should not be jeopardized by requiring a hearing as a precondition to the removing of an immediate menace to the public<sup>87</sup>. The same principle could be applicable in the penalization of certain petty traffic violations, since they are described and defined as being under the non-criminal status. First of all, the legislature must define what are petty traffic offenses, and then determine the limits of the fine to be imposed by the administrative agents. These petty offenses can be characterized as those which arise out of technical violations of the laws and regulations governing the traffic law. For example, the New York Motor Vehicle Law has already distinguished these offenses from other serious charges classifying them under traffic infractions. Therefore, the traffic police could impose the penalties and collect them on the spot. However, the act of the agent would have to be reviewed by the court, or by the superior administrative authorities, or by both, if the violator so demanded. This opportunity for the violator to have the administrative agents' action reviewed should satisfy the security required by the due process of law. In the case of appeal, the traffic court may review the entire case and weigh the evidence independently. Since this system would relieve a great deal of the traffic court's load, the courts would have the necessary time to apply all the procedural rules and constitutional guarantees. One may quarrel with this proposition and say that to impose and collect the penalties by traffic agents would be to open the door to corruption. It is true that corruption is one of the main problems of society. There are many reasons for this. Even in the current traffic enforcement corruption can exist. But misapplication of the law here and there is not a sufficient reason to deny a system as a whole.

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86) In certain cases, it is held that the requirements of due process of Law are satisfied by the recognition of the right of the party to test the validity of administrative action in action of tort for the recovery of damages against the administrative officials who have exceeded their legal authority. See. *Gregorie v. Biddle* 117, F.2d 579; *Barr v. Matteo*, 360 US 564.

87) **Gellhorn, W.** *Supra* note 14, pp. 660.

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