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Ross D. Netherton

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FAIR TRIAL IN TRAFFIC COURT

ROSS D. NETHERTON*

No ideal in Anglo-American legal tradition is more basic than the ideal of fair trial. Expression of this ideal as a part of the law of the land was one of the objectives of the English barons at Runnymede,¹ and was also one of the concerns of the framers of the Bill of Rights of the Constitution of the United States. However, study of our legal system discloses a contradiction between the belief in fair trial and the failure to practice it in the day-to-day administration of justice. This is not the result of any basic weakness in our ideals, or of active efforts to subvert them. Rather, in the broadest view, it is a manifestation of the need for our legal institutions to grow and adapt themselves to our changing social institutions.

Nowhere is the strain of this process of adjustment more apparent today than in our traffic courts. Partly the victims of circumstances because of the number and the nature of the offenses that they must try, these courts often have been compelled to function under conditions that are anything but conducive to the best administration of justice, or calculated to reassure the public that they are performing their proper or most useful role in the conduct of government. To say that modern traffic court justice is only a sham is obviously unfair to the many able jurists who are working at all levels to improve this situation. But, on the other hand, there is as yet no basis for saying that we have found the answer to our traffic courts' dilemma. To some extent this is due to the limitations within which the search for relief must be carried on. Palliatives can ease but cannot cure their basic problems. Judicial machinery can be driven faster, but it cannot perform tasks for which it is unsuited or was never intended. But, most important, legal reforms must not go so far in seeking efficiency that they sacrifice the ideal of fair trial as a living symbol of the role that courts play. History teaches that whenever efficiency has become the dominant concern in handling a certain type of legal problem, ways have been devised to relieve the courts of primary responsibility for handling such problems. There are almost no lengths to which we will not go in order to avoid destruction of the public's

*Legislative Counsel, American Automobile Association, Lecturer, Washington College of Law of the American University.

1. See Reprint of Magna Carta, paras. 17-22, 24, 36, 38-40, 45. S. Doc. No. 180, 81st Cong., 2d Sess. (1950), Plucknett, *A Concise History of the Common Law* 22-25 (4th ed. 1948).

faith in the courts as the individual's defense against oppression—as the one place where the individual can challenge his government in all its majesty and omnipotence under circumstances which preserve his own personal dignity and protect him in his defiance against reprisal beyond a just punishment for proven guilt.

Traffic courts today stand at the crossroads. They must carefully consider how much further they can go in modifying the procedure of criminal justice before they undermine the ideal of fair trial. Route markings at this crossroads are confused, and where road maps show unknown areas, judicial cartographers have filled them with pictures of dragons and hobgoblins. In this setting there is urgent need for explorers who are willing to risk the unknown.

THE IDEAL OF FAIR TRIAL

In one sense the concept of fair trial is defined in the language of the constitutional provisions, state and federal, that guarantee certain procedural rights to the accused in criminal proceedings. The Sixth Amendment to the Constitution of the United States is specific as to the necessity of "speedy and public trial," an impartial jury of the state and district wherein the crime occurred, information as to the "nature and cause of the accusation," confrontation with accusing witnesses, compulsory process for obtaining witnesses for the defense, and the assistance of counsel. State constitutions, in varying degrees, contain similar enumerations.² But the constitution makers did not rely entirely upon enumerations, however elaborate. Indeed, they could not rest the matter there. In the United States Constitution, the definition of fair trial must be understood in terms of Article 3, describing the judicial power of the United States, and the fifth and fourteenth amendments. Comparable problems arise in attempting to arrive at a definition of fair trial under the state constitutions. Here, phrases like "due process of law" and "equal protection of the law" defeat the search for a single, neat definition by injecting into the law of the land phrases that are themselves synonyms for "fair trial." One cannot blame the constitution makers for this, phrases like "due process" and "fair trial" were meant as symbols of government, and as mandates for all the judges of all the courts in all the years to come.

So the courts have been left to hammer out the working defini-

2. See, *e.g.*, N.H. Const., Pt. 1, arts. 14-15, 17-19; Ala. Const., art. I, §§ 6, 7, 11, Mo. Const., art. I, §§ 18(a), 18 (b), Va. Const., art. I, § 8, Wyo. Const., art. I, §§ 8, 9, 10; Kan. Const., bill of rights, § 10; Ill. Const., art. II, §§ 2, 9; Ga. Const., art. I, § 1, paras. 3, 5, Ohio Const., art. I, § 10; N.J. Const., art. I, § 10; Wash. Const., art. I, §§ 21, 22, Conn. Const., art. I, §§ 9, 10; Pa. Const., 6th amend., Colo. Const., art. II, §§ 16, 23.

tion of fair trial day by day, and case by case. Frequently their pronouncements have been so general as to become almost cryptic. For example: "A fair trial . . . is a proceeding 'which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial.'"³ Or, fair trial "means a trial which insures the doing of substantial justice in the interest of the public."⁴ Other decisions seek to isolate the elements of fair trial, singly or by groups, after the fashion of the constitutional enumerations. It is clear from these decisions that observance of principles is more important than observance of forms.⁵ Also, it is not expected that courts will achieve perfection, procedural technicalities will be overlooked as long as the trial is free from defects in matters of consequence, or, as the courts say, "material" or "substantial" matters.⁶ The impartiality of the judge and jury are, of course, essential elements of fair trial.⁷ So is the necessity of due notice and effective opportunity to offer a defense.⁸ Failure to hear a material witness,⁹ failure to permit the accused to testify,¹⁰ improper conduct or remarks by the judge or prosecutor¹¹ all may destroy the fairness of trial. Undue delay and undue speed in bringing a case to trial must both be avoided.¹² The atmosphere of the trial is also important, not only as it affects the willingness of witnesses to tell the truth, but also the willingness of jurors to believe it.¹³

Court decisions thus add substantially to the constitutional defi-

3. *Johnson v. City of Wildwood*, 116 N.J.L. 462, 464, 184 Atl. 616, 617 (1936).
4. *Capone v. Union County Park Commission*, 9 N.J. Misc. 1105, 1106, 156 Atl. 782, 783 (1931).
5. *State v. Pryor*, 67 Wash. 216, 219-20, 121 Pac. 56, 58 (1912).
6. *State v. Haffa*, 246 Iowa 1275, 1286-87, 71 N.W.2d 35, 42, *cert. denied*, 350 U.S. 914 (1955).
7. *Fisher v. State*, 145 Miss. 116, 133-34, 110 So. 361, 365 (1926), *Gil-land v. Commonwealth*, 184 Va. 223, 235, 35 S.E.2d 130, 135 (1945).
8. *Amrine v. Tines*, 131 F.2d 827, 833 (10th Cir. 1942).
9. *Wong Kew ex rel. Wong Yook v. Ward*, 33 F. Supp. 994, 997 (D. Mass. 1940).
10. *People v. Rakiec*, 260 App. Div. 452, 457, 23 N.Y.S.2d 607, 612 (1940).
11. *State v. Hudson*, 358 Mo. 424, 425-26, 215 S.W.2d 441, 442 (1948), *State v. Carter*, 233 N.C. 581, 583, 65 S.E.2d 9, 10 (1951).
12. *Di Maio v. Reid*, 132 N.J.L. 17, 18, 37 A.2d 829, 830 (1944).
13. *Fisher v. State*, 145 Miss. 116, 110 So. 361 (1926). Also of interest is the statement in *Sunderland v. United States*, 19 F.2d 202, 216 (8th Cir. 1927) "Fair trial means a trial conducted . . . in substantial conformity to law . . . before an impartial judge, an impartial jury, and in an atmosphere of judicial calm . . . that the acts and language of the prosecuting attorney are subject to control . . . that the defendant shall have a fair opportunity to outline his defense to the jury . . . that right of cross-examination shall be respected . . . that the judge may not extend his activities so far as to become in effect . . . an assisting prosecutor or a 13th juror . . . that, if evidence of good character of the defendant is introduced, an adequate instruction shall be given touching the probative value of such evidence."

tion of fair trial. But this definition is constantly being expanded and refined, and, in the last analysis, can only be understood in terms of the purpose which it is designed to serve. Consider in this regard the statement that " 'a fair trial is one conducted in all material things in conformity to law.' " ¹⁴ (Emphasis added) The final phrase is the significant one, for it seems to indicate the belief that, regardless of what particular formalities and procedures were involved, the trial satisfied the requirement that it had been conducted according to the "rule of law," and not the "rule of men."¹⁵ It was therefore a "fair trial," and the court's rationale seems to be that as long as the procedure does not depart so far from this principle of government that it shocks the conscience of the public, judicial procedure may be streamlined or modified without risking rejection as a violation of constitutional rights. The test of fair trial both for the appellate courts and all who would improve the administration of justice is, therefore, a pragmatic one—a trial is fair if the procedure and events involved vindicate the belief that all steps and all decisions involving material questions have resulted from the application of established rules of law to facts elicited in an orderly and uncovered manner.¹⁶ In requiring compliance with this standard, all other considerations are secondary, for the symbol of fair trial is essential to maintaining confidence in, and securing compliance with, the community's criminal laws.

Traffic courts, perhaps more than any other tribunals in our legal system, must be scrupulous in their rules and practices since it is there that the great majority of the public obtain their only firsthand impression of the administration of justice. New Jersey Chief Justice Arthur Vanderbilt has stated this most dramatically ¹⁷

14. *People v. Riley*, 191 Misc. 888, 892, 83 N.Y.S. 2d 281, 284 (1948), *Hill v. State*, 76 Okla. Crim. 371, 381, 137 P.2d 261, 267 (1943).

15. Regarding fair trial in recent cases arising under the loyalty and security program of the federal government, see Arnold, *The American Ideal of a Fair Trial*, 9 Ark. L. Rev. 311 (1955). See also Arnold, *The Symbols of Government*, c. 6 (1935); Hardy, *Truth, The Essential Element of Justice*, 27 Miss. L. J. 85 (1956).

16. For example, the question of whether due process was violated arose in *Breithaupt v. Abram*, 25 U.S.L. Week 4148 (U.S. Feb. 25, 1957), where, to determine intoxication, blood was extracted from petitioner while he was unconscious and unable to give his consent. In upholding the lawfulness of this procedure, the court said: "due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by that whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct. It is on this bedrock that this Court has established the concept of due process." *Id.* at 4149.

17. David Beecraft Memorial Award Address, National Safety Council, 1949. See also the 16 resolutions of the Conference of Chief Justices regarding improvement of the administration of traffic court justice. These resolutions were approved by the Conference of Governors in 1952.

What they see and hear—and sometimes smell—in these courts does not tend to create respect for law and 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. From the judicial point of view this aspect of the work of the traffic courts 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.

TRAFFIC COURTS AND TRAFFIC JUDGES

It is only within the past twenty years that professional organizations interested in improving the administration of justice have begun to turn their attention to traffic courts. As a result, there still is much to be learned about the way that courts throughout the nation are handling traffic cases. At present, it is estimated that more than 20,000,000 arrests or citations are made annually on charges of traffic law violations.¹⁸ Of course, not all of these cases are disposed of by court trial. Nationwide statistics are sketchy, but the American Bar Association has estimated that traffic courts in cities of more than 10,000 population annually hear and decide about 6,000,000 cases.^{18a} Viewed in any context, this is an appalling case load.

18. ABA, Report of Special Committee on Traffic Court Program, 136-37 (1956). See also, 27 Uniform Crime Reports, No. 1 (1956). Based on reports from 206 cities having over 25,000 population. The Reports show the following: Total number of persons charged with motor vehicle and traffic offenses during calendar year 1955 10,265,788. Total found guilty as charged: 7,439,762. Total found guilty of lesser charge: 47,908. *Id.* at 60-61.

As to release of persons not held for prosecution, 27 Uniform Crime Reports, *supra*, show the following based on reports from 611 cities having a total population of 22,413,731. Number of persons released after being charged with traffic violations: 117,010 (522.0 per 100,000 population). Number of persons released after being charged with parking violations: 899,318 (4,012.4 per 10,000 population). Number of persons released after being charged with other traffic or motor vehicle law violations: 60,615 (270.4 per 100,000 population). *Id.* at 63.

For comparison see Porter, *The Traffic Court System*, 31 J. Crim. L., C. & P.S. 401, 405 (1940), who states that at that time traffic violations constituted approximately 40% of all arrests.

18a. ABA, Report of Special Committee on Traffic Court Program, *op. cit. supra* note 18, at 137. See testimony of Charles S. Rhynne, Chairman, ABA House of Delegates before the Congressional Committee studying problems of traffic safety. Transcript of Hearings of March 25, 1957, Before the Subcommittee on Traffic Safety of the House Committee on Interstate and Foreign Commerce, 85th Cong., 1st Sess.

The great bulk of traffic cases are tried before courts of limited jurisdiction at local government level. Municipal courts, city courts, magistrate courts and police courts serve the urban and metropolitan areas. Justices of the peace, trial justices, trial magistrates, and similar courts serve rural areas and incorporated towns and villages. Except in rare instances there are no "traffic courts" in the sense of a separate tribunal, staffed by personnel specially trained to deal with the particular evidentiary and psychological aspects involved in traffic offenses, and organized to permit administrative matters to be handled with the greatest efficiency for effective cooperation between the court and other agencies of government whose activities are affected by the traffic problem. This unfortunate circumstance of having traffic cases handled by such a miscellaneous and heterogeneous group of courts is a major stumbling block to any efforts either to improve the brand of justice within the courts as they are, or to introduce changes in administration and procedure looking toward greater uniformity and effectiveness.¹⁹

Use of state and county courts for the trial of traffic cases is generally limited to instances where local government laws prevent the extensive use of municipal courts. Understandably, state and county court officials have not encouraged the docketing of traffic cases. Since they exercise original jurisdiction in all serious criminal charges, these courts are accustomed to cases involving lengthy trial, complete with procedural safeguards at all steps in the trial, and deliberate examination of situations involving many issues. Few traffic law violations are of the seriousness or complexity that typify the other criminal cases in these courts. Since they do not fit into the regular business of these courts, traffic cases often tend to be resented and disposed of impatiently at the beginning or end of the day's business. Seldom do these courts have the benefit of access to the defendant's past driving record, the physical equipment with which to visualize the scene of an accident or alleged violation during trial, or experience in the use of the particular kinds of scientific evidence that traffic accident investigation squads pro-

19. Warren, *Traffic Courts*, c. 3 (1942), "The Courts Where Traffic Cases Are Tried." It was Warren's conclusion that "Judged by any fair standard neither justices of the peace nor the other courts mentioned work satisfactorily in the trial of traffic cases. It should be apparent that the very miscellaneous nature of the courts which generally handle traffic cases precludes regularity of systematic adjudications. The use of different courts, at different places, with different judges must naturally produce somewhat heterogeneous results. But aside from this makeshift organization there is another and perhaps more basic criticism, namely, that these courts are not in fact prepared to handle traffic cases." *Id.* at 24.

vide. Generally, also, state and county courts hold their sessions at times and places not convenient to the public to appear for trial. For these reasons, the trial of most traffic violations occurs either in justice of the peace or other local courts, or else in special branches of municipal courts assigned to traffic cases.

Justices of the peace and magistrates who preside over courts in various units of local government comprise the largest group of judges exercising traffic law jurisdiction. In certain respects, these courts provide a more satisfactory handling of traffic cases than do state and county courts. They are not preoccupied with other more important business. Their approach to procedural matters is simple and direct. Physically these local courts are closest to the people. But it is generally conceded that their shortcomings more than balance these advantages. Too often these courts are part-time tribunals, housed in inadequate quarters, staffed by personnel completely untrained in legal matters and lacking an appreciation of the problems of traffic control, presided over by persons politically appointed or indiscriminately chosen in local election, and financed by the fee system. With a good deal of justification, the justice of the peace and his counterpart in the incorporated town or village have acquired a reputation for "cash register justice" and "soaking the stranger" in traffic cases. By the undignified surroundings in which many of them conduct their business, the haphazard proceedings, showing little apparent concern over the keeping of records, the frequent reports of "bargaining" with the accused over the plea or the amount of bond, their penchant for fees which exceed the amount of the fine, and their tendency always to back up the arresting officer, these magistrates have become an anathema to the motoring public.

Evaluations of the standards of justice in justice of the peace courts and other comparable local courts almost inevitably tend to cite the fee system as a basic cause for their weakness. Originally, in a time when taxation for local government services was practically nonexistent, both the courts and the law enforcement agencies were on a revenue basis to defray their expenses. The consequences of this arrangement are common knowledge.²⁰ Since fees generally are collected only from defendants who are convicted, the system results

20. The following case is illustrative: In connection with an alleged stop sign violation in a small North Carolina town, the accused was required to post appearance bond in the amount of \$27.45. Itemization of this amount by the court was as follows: fine, \$10.00; warrant, 35¢; bond, 60¢; issuing subpoena for witnesses, 15¢ each; preparing bill of cost, 25¢; docketing indictment, 25¢; judgment, \$1.00; filing fee, 10¢; original process, \$1.00; docketing judgment, 25¢; indictment, \$1.00; mayor's fee, \$6.00; seal of office, 50¢; arrest fee, \$2.00; "county spec.," \$1.00; "L.E.O.B.&R. fund,"

in giving the magistrate an interest in the outcome of the trial. The argument that no man should be trusted to decide impartially a case in which he has a pecuniary interest received approval by the Supreme Court of the United States in 1927, in *Tumey v. Ohio*.²¹ But, to the surprise of many, it has not marked the end of the fee system. In 38 states the part-time justice of the peace and his counterpart, the small town magistrate, continue to serve as the courts of trial for a wide range of petty crimes, including traffic offenses, and as the committing magistrates for more serious crimes.²²

The explanation of why programs for the improvement of judicial administration have not made better progress in this area would appear to be twofold. One factor is the difficulty of the state government to provide an alternative to the part-time, fee compensated magistrate.²³ Many state budgets literally could not stand the strain which would result from establishment of a state-wide system of regular courts with salaried judges, even if necessary changes in the state constitution could be arranged.

A second factor is the widespread feeling that time and money spent on "fighting the system" is wasted. To the motorist traveling away from home for business or recreation speedy justice is essential. If he cannot have it, he will—because of the relatively small amount of the penalty or appearance bond involved—forfeit his bond, or else waive appearance and pay his fine. Yet in most justice

\$2.00, Peace Officers Association Fund, \$1.00. In the instant case, the accused was a resident of Pennsylvania who forfeited bond because of inability to return to North Carolina for trial. Had trial been held additional fees for witnesses subpoena would have been charged. Letter from G. A. Webb, Mayor of Franklinton, N.C., to C. D. Spidler, an attorney from Lebanon, Pa., Nov. 25, 1955, containing a copy of the docket sheet and recognition bond in the case of *State v. Yorty*, then pending in the Franklinton Justice Court.

The fee structure varies throughout the country. In Michigan, for example, justices of peace are limited to \$2.00 for parking violations. Where moving violations are involved, the fee limit is \$4.30 for a plea of guilty and \$6.50 where trial is involved. Fees are paid by the defendant where a conviction is involved and by the county auditor where an acquittal occurs.

21. 273 U.S. 510 (1927)

22. Warren, *Traffic Courts*, 21 (1942). A more recent survey by the American Automobile Association, begun in 1955 and completed in 1956, indicates 40 states where justices of the peace are being used to enforce traffic laws. In 31 states fees are allowed in connection with all arrests, and in 17 states the justice's fee was allowed only in cases of convictions. See also Economos, *Traffic Courts and Justice of Peace Courts*, 25 N.Y.U. L. Rev. 66-84 (1950).

23. Utah is a case in point. Bodenheimer, *Manual for Justices of the Peace in the State of Utah* 124-25 (1956), points out that the statutory fees have not been changed since 1898, and that the amounts are not only inadequate but unworkable under present-day conditions. One Utah justice of the peace is quoted as stating that "if the laws relating to fees are not amended, the justices of the peace in Utah will sink to a low level. Qualified men cannot afford to assume the responsibilities of such an important office on the pay received."

of the peace courts speedy justice is unobtainable. In one small town, having a national reputation as a "speed trap," traffic cases are tried in a police court held every second and fourth Saturday. In other courts it is the practice to require the accused to appear twice: once to set the date for trial, and again for trial. Rather than attempt to appear, together with witnesses, at such times, the motorist takes a "pay-up-and-forget-it" attitude. Moreover, a trial, once scheduled, is more likely to leave the defendant with a feeling of rancor toward the system than a feeling that he has had a fair and complete trial of his case. This no doubt goes far to explain not only the great number of bond forfeitures and pleas of guilty in such courts, but also the lack of interest in appealing convictions to courts where the doctrine of *Tumey v. Ohio* could be applied.

Although numerically fewer than the justices of the peace and local magistrates' courts, municipal courts serving urban centers and metropolitan areas handle the great majority of traffic cases. In these municipal courts many progressive steps in the efficient administration of justice in traffic cases have been developed. The very fact that traffic cases comprise such a huge volume of the court's business has compelled these courts to improve methods of handling these cases apart from other business of the court and by specially trained judges and court personnel. Naturally, however, not all cities have the facilities, the trained judges and court personnel, to maintain the standards found in the best of these courts. Where such conditions are absent, the chances for fair trial, as viewed from the defendant's position, diminish rapidly. His reaction in traffic court prompts him either to plead guilty despite his personal feelings regarding the charge, or else to stand trial with only his own denial interposed as a defense to the testimony of the arresting officer.

For Americans, to whom the courts stand as a fundamental symbol of justice and the protection of individual liberty under the law, this may seem a strange reaction. Yet the magistrate of a New York City traffic court has recently been quoted as saying that forty per cent of the motorists who appeared in his court pleaded guilty despite the fact that they honestly believed they were innocent.²⁴ In Baltimore, a traffic court judge has stated, apparently with satisfaction, that ninety-five per cent of his cases enter pleas of guilty.²⁵

24. Sontheimer, *Traffic Courts—Blot on American Justice*, McCall's, June 1956, p. 27

25. Scherr, *Teen Age Traffic Court*, 31 Transactions, National Safety Congress 56-58 (1952).

To understand the actions of a traffic court defendant when he steps to the bar to plead to the charge against him, one must step into his shoes for a moment. Consider, for example, what he thinks when he reads the charge against him. Recently it was reported that a motorist in Los Angeles received a traffic citation charging him with "violation of Article 5" of the vehicle code.²⁶ It happened that article 5 had eleven sections and twenty-one subsections, all written in legislative language and related to other portions of the code. This was his notice of the charge that determined the issues and the evidence involved in his trial! Or, take the reported instance of a housewife who received a traffic citation for failing to yield the right of way.²⁷ Her husband was amazed to hear of it because a few weeks previous he had received a fine under the same section of the code, for an incident at the same street intersection in which he did precisely what the arresting officer said that his wife should have done but didn't. Fifteen years ago, George Warren wrote in his comprehensive study of traffic courts that "the aim in all traffic rules should be simplicity."²⁸ However, today's motor vehicle codes are so extensive and so frequently amended that few people can know the law or understand the issues involved in the charges that are tried in traffic court.

Consider, also, what a defendant thinks as he sits in traffic court awaiting the call of his case. In some courts, he must witness a series of cases involving the petty thief, the drunkard, the street-walker, the vagrant—in short, the worst and most miserable elements of society. The resultant desire of the motorist to get his case over and get out as soon as possible is natural. But, even where traffic cases are separated and heard by the court on "traffic days" or where they are returned to a separate traffic division of the court, the feeling of frustration is seldom overcome. In the Municipal Court of Chicago, it is common to see each of three judges assigned to traffic cases dispose of 600 to 700 cases a day. Little time is spent in reaching a decision, and in this regard it is of interest to note the findings of Warren regarding all urban courts

The situation in our larger cities is illustrative. A judge entering the courtroom may be confronted with anywhere from 200 to 1,000 traffic cases. Assuming a six-hour court day there will be, on the average, approximately one-third of a minute to one and a half minutes available for the disposal of each case.²⁹

26. Los Angeles Mirror-News, Aug. 1, 1956.

27. *Ibid.*

28. Warren, *op. cit. supra* note 22, at 16.

29. *Id.* at 112. Warren suggests that a trained judge can handle up to 115 non-accident cases daily, allowing an average of 4 minutes per case. In

The consequences of such pressure are, as Warren found, irreparable. "The evidence of police officers and witnesses alike was cut short, defendants were waved away by the judge while still giving their excuses and the judgment of the court was given with one eye on the clock. This type of trial all too often left convicted defendants with the impression that they never had a chance."³⁰

The defendant's reaction to what goes on in traffic court is likely to be shared by those persons who are not personally involved in his case, but who have been asked to appear as witnesses. Thus, the difficulty of obtaining witnesses for the defense must also be regarded as a result of the conditions prevailing in traffic courts, and a factor in making fair trial difficult.

Mention should also be made of the violations bureau and the effect of its practices upon the tendency to plead guilty rather than stand trial. Violations bureaus—sometimes known as "cafeteria courts"—are creatures of the automobile era. It is obvious that traffic cases in urban and metropolitan areas are so numerous that it is impossible to deal with them according to the same procedure applied to serious charges under the criminal code. The theory of the violations bureau is that in cases where guilt is admitted, and which do not for other reasons merit a court trial, the defendant may be allowed to waive court appearance and pay a prescribed penalty at his convenience to an administrative officer of the court.³¹ In this way the trial docket may be kept clear of cases involving merely offenses against public convenience, allowing the judge to spend more time on cases involving public safety in a real sense.

Some outstanding examples of effective use of violations bureaus may be cited. However, many violations bureaus are seriously handicapped in properly carrying on their purposes. Many of these bureaus are located in police departments and staffed by police clerical employees. For practical purposes they are completely removed from the judge who by law is responsible for supervision of their operations. The bad effects of this are often reflected in the tendency of the violations bureau to accept forfeitures of bond or payment of fines for violations of the law that involve serious threats to public safety, or from persons whose driving records

this connection he cites what no doubt is the all time record. On January 15, 1936, one New York City magistrate heard 1,016 cases in two and one-half hours. *Id.* at 33.

30. *Id.* at 113.

31. ABA and the Traffic Institute, Northwestern University, Judge and Prosecutor in Traffic Court 5 (1951), Warren, *op. cit. supra* note 22, at 56-65.

indicate urgent need for some corrective measures.³² Warren, in his study of traffic courts, concluded that, "To put it briefly, violations bureaus in most cities seem to exist mainly for revenue purposes and appear to be considered in that light by the motoring public."³³

Thus the conditions under which traffic courts must perform their functions are one important aspect of the problem of providing fair trial for the motorist. Viewing the situation as a whole, there are, of course, examples of traffic courts and judges in whom the public reposes confidence and to whom it gives sincere support. The trouble is that the gap between the best and the worst of the traffic courts is great, and the great majority appear to be below the standard which the community sense of justice demands.

TRAFFIC COURT PROCEDURE

Equally involved in the problem of fair trial is the procedure of the traffic court. Two forces have been mainly responsible for the current trend in traffic court procedure. One is the compulsion of the case load, acting to force departures from the practices followed where other crimes are involved. The other is the belief that if only the accused violators could be brought into traffic court, their sobering experience there—regardless of whether they were found guilty or innocent—would make them more attentive to their responsibility as drivers to reduce accidents.³⁴

Certain things may be singled out as the hallmarks of the "new" traffic court organization and procedure. In an effort to eliminate separate steps and papers for the arrest, the complaint and the notice to appear, these features are sometimes combined into one document issued to the accused at the time of apprehension by the

32. Surveys made by the American Bar Association's Traffic Court Program have indicated the following: In Nashville (1952) 70% of all traffic charges were disposed of in the violations bureau and 30% were tried in court. In Indiana (1954) a survey of 33 cities showed 56,593 cases heard in court, and 215,228 disposed of in violations bureaus. In Saginaw, Michigan (1954), the combined 1952-53 reports showed 14,181 cases tried in court and 73,070 disposed of in violations bureau. In connection with the Saginaw survey, the ABA report stated, "Except for the 'private hearing' feature of the court's practice, there is little incentive to appear in court. The fine schedule provided for the violations bureau permits payment of fines for any number of offenses at low rates and without significant increase for successive offenses. This practice has no educational value or corrective value."

33. Warren, *op. cit. supra* note 22, at 59.

34. See Economos, *The Traffic Problem, Traffic Laws, and Traffic Courts*, The Annals of the American Academy of Political and Social Science, May, 1953, pp. 13-20; ABA and the Traffic Institute, Northwestern University, Judge and Prosecutor in Traffic Court, c. 5, 14 (1951), Burton, Traffic Prosecutor's Manual 1-2 (1950), ABA, A Report on the Courts of Limited Jurisdiction in the State of Indiana 63 (1954), Fisher, *Traffic Courts and Driver Attitudes*, 31 Neb. L. Rev. 227-36 (1952).

police.³⁵ In court, such a document becomes the entire basis of the prosecution. Or, when combined with a waiver of appearance and plea of guilty, it may become the basis for the complete disposition of the case by the court or violations bureau. This device is aimed at the heart of an old and vexing problem. Most traffic violations are of such minor importance, both intrinsically and in the amount of penalty involved, that they are not regarded as justifying the paper work involved in going through the same pre-trial steps used in other criminal cases. Modern motorists, able to travel across state boundaries with ease, cannot be served, or if served cannot appear, to answer charges made through the historic forms of criminal procedure. The argument for simplified arrest procedure is thus a forceful one, but the success of any new combination of procedural steps in protecting the fairness of the subsequent trial must be weighed against the adequacy of notice to the accused. Few criticisms have been stronger than those aimed at the adequacy of the complaint. In areas where the complaint is still prepared as a separate document, the tendency is to describe the offense cryptically either by title or rote. Executed on forms prescribed variously by the police department, the prosecutor's office, the clerk of the court and the judge, these complaints often fail to protect the accused from general and ambiguous charges and are useless to the accused in preparing a defense. This defect has by no means been overcome in the courts which adopted a uniform printed form of ticket and complaint on which the arresting officer checks a series of items describing the offense, the degree of seriousness, the prevailing traffic conditions, and type of highway zone involved. Because these categories are necessarily generalizations, the court and the accused must still wait for the trial to hear testimony particularizing on the facts leading to the arrest.

In a few large municipal courts, efforts have been made to develop for traffic cases a device similar in function to the master in chancery or referee in a bankruptcy proceeding. Following the opening of traffic court it is announced that all who desire to have their cases heard before one of the several referees attached to the court may do so immediately and avoid waiting for the daily call of the court docket. Defendants appearing before a referee are heard informally as they may care to respond to the charge against them. Prosecution testimony may or may not be asked for. At the conclusion of the hearing, the referee makes a finding with which the defendant may agree or which he may reject. If he agrees to

35. Indiana Legislative Study Comm'n on Traffic Safety, *A Report on the Courts of Limited Jurisdiction: Traffic Courts* 68-71 (1954).

abide by the referee's recommendation, he may pay his penalty and leave, if he desires to contest the matter, he may have his case re-docketed for a hearing before the judge. In this way cases that may not be disposed of by the violations bureau are given a hearing and disposed of without taking the time of the judge, except for certification of the order in the case at the conclusion of the day's business.³⁶

Initial reaction to the use of this device has been mixed. Without question it has provided a method of relieving the court of the necessity of giving full hearing in open court to all docketed cases, and in this way has allowed more time for hearings which are serious, involve several issues, or are contested. But criticism has been directed at the effects of the informality, the confusion, and the crowded conditions that prevail. A referee may handle several hundred cases daily. His tendency is to announce to the entire group waiting that those who wish to plead guilty will be taken first and their cases disposed of without the necessity of any hearing. As to those cases which receive hearings, the tendency of the referee is to commence by asking the defendant "what he has to say" in answer to the charges, postponing any examination of the evidence supporting the charge until after the hearing of the defense. The result is likely to be anything but reassuring to the accused as he reflects upon the fairness of the hearing.

In contrast, some cities have developed a somewhat different device for providing hearing prior to trial by utilizing the criminal division of the corporation counsel's office.³⁷ In cases where traffic violations are charged in connection with motor vehicle accidents, the parties and arresting officer are called before an assistant corporation counsel for conference. "Traffic boards" with movable model cars are used to recreate the events involved. Considering in turn the testimony of the officer and the parties involved, and any statements of counsel, the corporation counsel makes a determination as to what charges, if any, should be allowed to stand. Although not a judicial determination, this procedure results in a reduction of the number of cases that must be heard by the traffic court judge, and the persons accused of traffic violations have full opportunity to present their testimony and cross-examine personally or through counsel.

The problem of advising the accused of his rights before the court is one of the most sensitive parts of current traffic court pro-

36. The procedure described herein is used in the Municipal Court of Chicago, Illinois. Comments of the author are based on personal observation and discussion with court officials and attorneys.

37. The procedure described is followed in the Municipal Court of the District of Columbia.

cedure. The defendant's procedural rights, either specifically guaranteed by statute or constitutional provision, or as a part of the concept of due process, may be listed as follows:³⁸

The right to counsel.

The right to obtain a continuance if necessary to obtain counsel and prepare a proper defense.

The right to testify or not to testify in his own defense.

The right to call witnesses and to have them subpoenaed under process of the court if necessary.

The right to demand a jury trial, without expense to the defendant.

The right to plead guilty or not guilty to the charge against him, and to have the consequences of his plea explained prior to entry of the pleas.

The right to take an appeal if he is not satisfied with the judgment of the court.

It has been pointed out that traffic court judges often assume that defendants know or should know exactly what they can and cannot do in court. They may feel that with their heavy case load it is futile to attempt in every case to make sure that the defendant clearly understands his rights. Too frequently they fail to realize that the citizen in traffic court is usually in strange surroundings and going through proceedings which are unfamiliar to him. "He is," as one writer put it, "standing in the midst of legal mumbo-jumbo land and it frightens rather than assures him."³⁹

In particular, the consequences of the plea of guilty require explanation individually because, in addition to the usual significance of the plea as it relates to conviction, mandatory suspension of driving privileges may be involved. Failure to advise of the consequences of a guilty plea when it involves the mandatory suspension of the defendant's license to drive has resulted in instances of higher courts reversing convictions, and countless complaints to motor vehicle administrators by motorists who did not understand that their plea would result in license suspension.

Another aspect of the importance of advising the defendant of his rights has been stressed by the President's Highway Safety Conference:⁴⁰

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

39. *Ibid.*

40. Report of Committee on Enforcement, President's Highway Safety Conference 32 (1949).

justice demands that each violator be individually tried by the judge and that there be no lining up of defendants waiting to be tried, in routine or summary fashion irrespective of the relative lack of seriousness of the violations. This is all the more important because the monetary sum involved in the average traffic case dissuades defendants from appealing to another court for relief.

Devices to explain the defendant's rights to him vary according to the discretion of the court. Some courts instruct defendants individually, others instruct collectively, some post signs, and some prepare folders which are handed to all persons entering court so that they may read while waiting to be called.⁴¹ Not only may the court attempt to reach the defendant when he comes to court, but pamphlets for public circulation through bar associations and civic organizations, and various forms of educational and public relations contacts may be used to reach the general public outside the courtroom.

In handling evidence at trial, traffic courts face another dilemma. It has correctly been observed that almost always there is but a single issue involved in a traffic case. Also, the judge usually is given no corroborative or impartial testimony to aid his decision, but must merely decide whether defendant's story raises a reasonable doubt.⁴² In the majority of cases the judge must rely as much on the defendant's character and appearance as the facts. These factors complicate rather than simplify the task of the judge, and are part of the basis upon which the public's impression of traffic court justice is formed. In justice of the peace courts and before local magistrates in rural areas, it is widely suspected that the court will invariably prefer to believe the testimony of the law enforcement officer rather than the accused, especially if the accused is an out-of-state motorist.⁴³ To many this tendency might not seem surprising,

41. ABA, Report on Courts of Limited Jurisdiction in Indiana 134-36 (1954). The author has also seen excellent pamphlets prepared for this purpose in the Municipal Court of Portland, Oregon, Police Court of Brentwood, Missouri, Traffic Court of Seattle, Washington, Corporation Court of Dallas, Texas, and Municipal Court of Lincoln, Nebraska.

42. Warren, *op. cit. supra* note 22, at 33.

43. Automobile clubs, newspapers, chambers of commerce and public officials receive a great deal of mail complaining of the treatment received by motorists in traffic courts and in connection with traffic law enforcement. It is the author's impression that the motivation of most of these complaints is the feeling that traffic court magistrates accept without question the testimony of the arresting officer, and regard the testimony of the accused as self-serving and worthless. Complaints also recite bits of side conversation between the judge and police which leave the accused with the impression that he is the victim of a scheme for obtaining municipal revenue rather than administering justice.

Fisher, *op. cit. supra* note 34, at 235, has expressed this feeling as fol-

and might be attributed to the conflict of interest inherent in the part-time, fee system courts. However, the reported conviction rates of many of the most progressive urban courts run almost as high. In Detroit's Recorder's Court, for example, it is reported that approximately eighty-five per cent of the persons appearing for trial are found guilty, and many of the remainder have their cases dismissed without prejudice because of lack of evidence to support the charge.⁴⁴

Such facts do not, of course, justify the conclusion that traffic court judges invariably abuse the discretion which the nature of the issue and the evidence before them forces them to exercise. But it does suggest that defendants in traffic court find it more difficult to produce evidence that creates a reasonable doubt as to their guilt than in other types of cases, and that the presence or absence of defense counsel in traffic court makes no appreciable difference in the outcome of the case.

The difficulties of presenting a defense to a traffic charge would appear to be growing greater with the increased use of scientific evidence such as chemical tests for intoxication, measurements of skidmarks to determine braking distance, and measurement of vehicle speed by so-called radar devices.⁴⁵ When such evidence is presented, courts tend to accept the competence of the evidence without question. Often statutory presumptions obviate the necessity of expert testimony on behalf of the prosecution where such evidence is used. Faced with this type of situation, there is very little that the accused can say in his own defense. He finds that his only avenues of attack on the prosecution's case are to question the

laws; "The typical violator is usually willing enough to swallow his medicine so long as he believes others convicted of similar offenses get the same prescription. This view probably reflects the attitude of the typical American motorist: He doesn't complain too vigorously against being punished for a traffic law violation if he knows he is not being discriminated against."

Inferential evidence that the motorist's feeling is shared by the bar may be contained in the remarks of Warren regarding the tactics of defense counsel in traffic cases. He indicates that instead of defense on the merits of the charge, their usual approach is to cite technical objections to procedure. See Warren, *op. cit. supra* note 22, at 107-10.

44. Correspondence between the author and Walter Seymour of the Michigan Bar. See also Seymour, *The Traffic Ticket*, *The Detroit Lawyer* 123, 124 (Oct. 1952). Here it is stated that a statewide survey in Michigan showed that 97.4% of all traffic arrests resulted in convictions.

45. Chemical test legislation. see Uniform Vehicle Code, § 11-902, adopted by 23 states; see also, Report of National Safety Council, Special Committee on Chemical Tests for Intoxication (1955). Skidmarks: see ABA and the Traffic Institute, Northwestern University, *Judge and Prosecutor in Traffic Court*, at 188-89 (1951). Radar. Va. Code Ann. § 46-215.2 (Supp. 1956).

credibility of the arresting officer's testimony or raise technical objections to the competency of the evidence. Generally he is not in a position to do either with any effectiveness because he was not in a position to fully observe the manner in which the evidence was obtained. Thus, the statutory presumption attaching to radar or chemical test evidence may in fact operate as a *presumption of guilt* instead of merely a *presumption of fact* designed to render expert testimony as to competence unnecessary.⁴⁶

The dilemma of the judge is thus increased. Under the weight of his case load, and in view of the well-established scientific basis for recognizing the competence of certain types of evidence, he must take advantage of presumptions and rely upon this evidence without reopening basic questions case by case. Of course, such evidence may be a protection for the innocent defendant against inaccurate eyewitness testimony. Yet, under the weight of his case load, the traffic court judge may be tempted to accept this type of evidence without adequate inquiry into the method by which it is obtained, to the detriment of the defendant.

This combination of factors working to hamper the chances of defending effectively against traffic charges has its greatest effect in cases where the law involved is stated in terms of an absolute prohibition, taking no account of traffic or other conditions. The best example is the absolute maximum type speed limit which is expressed in terms of an arbitrary statutory limit rather than a limit which is reasonable and prudent under the circumstances.⁴⁷ In a state having absolute maximum speed limits and a presumption in favor of radar evidence, there is no practical way to make a defense, for the defendant has no way to question the competency or credibility of the police, and testimony as to the traffic conditions and other circumstances which are within his scope of knowledge are irrelevant.

THE CHANGING ROLE OF TRAFFIC COURTS

Comparison of the way that traffic cases were handled twenty-five years ago with the way that they are handled today suggests that

46. Such was one of the grounds relied upon by petitioner in *Dooley v. Commonwealth*, 198 Va. 32, 92 S.E.2d 348 (1956). The Virginia Supreme Court of Appeals upheld the validity of the statute against attack.

For an excellent treatment of the technical background of radar evidence of vehicle speeds and its limitations in court, see Carosell and Coombs, *Radar Evidence in the Courts*, 32 *Dicta* 323-57 (1955).

47. Marsh, *More Flexibility Is Needed in Traffic Control*, *Traffic Quarterly*, July 1955, pp. 431-46, Wharton, *Must We Have Fake Traffic Laws?* *Reader's Digest*, Dec. 1955, p. 33, American Automobile Association, *Motor Vehicle Speed, Its Control and Regulation* (1955).

the role of traffic courts in the American legal system is changing. In the simplest terms, this change seems to be a movement away from the handling of traffic cases according to the procedure and standards of judicial proceedings, and toward the creation of a new form of administrative proceeding which is a mixture of adjudication, education and rehabilitation. Since the evolution is not yet complete, this new system has no name, but certain of its main features can be described.

Consider first the role of the traffic court as an adjudicative agency. The tendency of traffic courts in urban and metropolitan areas is to strive for greater efficiency in handling their case loads by modifying the procedure generally applicable in criminal cases. The use of referees, the emphasis on informality, and the reliance on violations bureaus to dispose of the majority of cases all appear to be borrowed from our system of administrative law and procedure. Systematic efforts to encourage the use of these devices are aided by conditions and practices that discourage the accused motorist from having the charges against him fully adjudicated by trial utilizing traditional criminal procedure. In this regard, and perhaps without realizing it, the "speed trap" courts of many rural areas have contributed to public acceptance of this situation.

The so-called "point systems," or driver merit rating procedures utilized by many motor vehicle administrators in the exercise of their power to suspend or revoke driving privileges have also had a profound effect upon the changing role of the traffic court.⁴⁸ Having found that neither the imposition of fines nor the experience of appearing before the bar of a typical traffic court produces the desired sobering effect upon motorists charged with minor or technical violations, traffic courts have laid more and more emphasis upon the relationship of their convictions to the suspension or revocation of driving privileges.⁴⁹ When the policy of the licensing authority has been set forth in a schedule of points or demerits to be

48. Regarding the point system generally, see Baker, *Driver Improvement Through Licensing Procedures* (1950), Kraft, *Driver Control* (1954), Netherton, *Highway Safety Under Differing Types of Liability Legislation*, 15 Ohio St. L. J. 110-33 (1954).

49. The views of Fisher, *op. cit. supra* note 34, may be regarded as typical. "[A] dangerously large number of drivers do not fear a fine and some continue to drive recklessly even after a jail sentence or loss of their driver's license for a limited period. In some cases it would seem that permanent suspension is the only way to keep them off the road, yet it is surprising how much sympathy will be forthcoming for the defendant in such cases. He is still defiant. He takes a chance and drives anyway and gets caught." See also ABA and the Traffic Institute, *Northwestern University, Judge and Prosecutor in Traffic Court* 269-72 (1951).

entered upon the convicted motorist's driving record, a conviction for a traffic violation tends to be regarded more in the light of its effect upon the convicted driver's point score rather than in the light of the penalty directly imposed by the court. Knowing this, it has become natural for the traffic court judge to consider this significant in deciding cases, or even to adopt the policy of the administrator as the policy of the court.⁵⁰

Some traffic courts have attempted to combine punishment with rehabilitation by utilizing the services of administrative agencies of local government working in the fields of medical services. One such step toward dealing constructively with "problem drivers" is the practice of referring them to psychiatric clinics. Detroit's Recorder's Court is the outstanding example.⁵¹ The traffic and ordinance division of the court was the first traffic court to commence this practice, beginning in 1936. Referrals to the clinic for examination are made following conviction and prior to sentence in cases where the defendant's record of past convictions or accidents gives reason to suspect the presence of mental or emotional problems. Full-time doctors on the clinic staff interpret the results of the examinations and act as advisors to the judge in connection with the defendant's sentence. Recommendations may include jail sentence, fines, psychological or psychiatric treatment, commitment to mental hospitals or other institutions, probation or suspension of driving privileges. Judicial action upon such advice may involve referral of the defendant to any of several types of institutions or to the state driver licensing agency. The number of referrals from the traffic court to the Detroit Psychopathic Clinic has increased annually, and currently amounts to approximately 1,000 cases per year.

"Traffic schools" or "violators' schools" are another rehabilitative device used by traffic courts. Sometimes referred to as extra-legal punishment, these schools take the form of a series of lectures and demonstrations dealing with traffic safety. Attendance at such classes may be made a part of the sentence imposed upon a driver convicted of a traffic violation. In some cities traffic schools are

50. For a description of an attempt to develop a point system for traffic courts, see Halsey, *Michigan's Judicial Point System*, 3 *Traffic Digest and Review* 5-12 (Aug. 1955).

51. See Cauty, *The Structure and Function of the Psychopathic Clinic, Recorder's Court, Detroit, Michigan*, 14 *Ohio St. L. J.* 142-53 (1953); Cauty, *Problem Drivers and Criminal Offenders: A Diagnostic Comparison*, 12 *Canadian Services Medical Journal* 136-43 (1956).

For descriptions of the system used in the Chicago Municipal Court, see Sheffler, *Traffic Courts and Their Role in Traffic Enforcement*, 35 *Chi. Bar Rec.* 229-30 (1954), Report on Referrals from the Traffic Courts to the Psychiatric Institute for May, June and July, 1956.

operated by the police department; in others by the board of education, a local safety council, or the traffic court. Cities utilizing traffic schools have made studies indicating an extremely low percentage of repeater-violators among graduates of the school. However, it is acknowledged that the success or failure of this form of treatment depends largely upon the skill of those presiding over the classes and the selection of the students by the court.⁵²

The range of experiments with nonlegal devices for rehabilitation of traffic violators is steadily being broadened as research reveals more about the causes of accidents and the psychology of driving. These devices are useful both to the court and to the driver licensing agency of the state. For the administrative agencies, this extension of efforts to rehabilitate problem drivers has merely meant added growth to already existing responsibilities. However, for the traffic courts, entry into this field of activity has meant that the court must surround itself with a number of satellite agencies which the judge directly supervises or which the judge may call upon for consultation.

In connection with the third characteristic of the new type of proceeding occurring in traffic court the judge assumes the role of educator. Through his opening remarks about traffic safety and traffic laws, the judge attempts to give his courtroom audience information and promote proper public attitudes toward safe driving and traffic law observance. This effort is carried on case by case if the judge takes time to explain or moralize in connection with his rulings. His lesson is directed both to the individual defendant and to the spectators. Often this educational process is carried to wider public audiences through press, radio or television publicity. Sometimes the setting is changed with the emphasis placed upon bringing the public into traffic court as visitors rather than defendants. As a result the traffic court has often become an auditorium and demonstration room for selling traffic safety to the public as well as a forum for the adjudication of criminal charges.

The readiness of traffic courts to establish a closer working relationship with administrative agencies and to utilize features of administrative law and procedure in the handling of traffic cases has led some to suggest that ultimately the evolutionary process

52. Warren, *op. cit. supra* note 22, at 173. See also, ABA and the Traffic Institute, Northwestern University, Judge and Prosecutor in Traffic Court 270-71 (1951), National Safety Council Public Safety Memo No. 89, Driver Improvement Schools (Jan. 1957), "Who Should Attend Traffic Court School?" An address by M. Rosenthal to the Traffic Courts Section, National Safety Congress, 1956.

will be to replace the traffic courts with administrative tribunals. A recently published plan for handling traffic cases recommends the use of special administrative tribunals for all traffic law violations except such serious charges as hit-and-run driving, negligent homicide, driving while intoxicated, or driving in defiance of a suspension or revocation of the privilege.⁵³ Judicial appeal would lie from the administrative decision. Under such a system most traffic law violations would be reclassified so as to make them abuses of the conditions under which the driving privileges was granted instead of misdemeanors under the criminal code. Penalties would be meted out with care to provide the maximum educational or rehabilitative effect on the driver. Punitive objectives would be secondary to the objective of identifying and removing from the highway those drivers who fail to respond to normal deterrent measures. A specially trained corps of hearing officers would be located at various convenient offices throughout the state to provide facilities for speedy hearing and decision of cases. Procedure would be based on rules in quasi-judicial proceedings before administrative tribunals. Costs of administration would be paid by the state from funds collected from fines. The results of such a plan, according to its author, would be felt not only by the individual defendant in the form of speedy, convenient, and more enlightened justice, but by the entire structure of the judicial system of the state. Since traffic offenses would be removed from the jurisdiction of justices of the peace, and the various local government courts, the fee system could be eliminated. Quite possibly, also, public respect for traffic law enforcement could be increased under a system thus removed from the influences of local political subdivisions.

A RETURN TO THE IDEAL OF FAIR TRIAL

To complete the evaluation of modern traffic court justice, the discussion must return to the ideal of fair trial. This is inevitable because in our society this ideal is one of the symbols of government which has been entrusted to the courts to preserve. This applies to traffic courts as well as other courts. In the task of preserving this symbol, the courts have certain advantages. The ideal of fair trial is, in large degree, expressed in the concept of due process of law, which the courts have said may be equated to the community's sense of decency and belief that prosecutions are being carried forward free from the whims of men. This allows a certain amount of room

53. Johnston, *A Plan for the Hearing and Deciding of Traffic Cases*, 33 N.C. L. Rev. 1-16 (1954).

for courts to alter the rules of criminal procedure as circumstances may compel. But, at the same time, it imposes a very real and practical limit on the changes that can be made. When procedure is altered too much or standards are allowed to deteriorate, the ideal of fair trial is endangered, and the court fails in its public trust. The test of whether trial is being rendered fairly generally occurs in appellate review. But where this is not available, or where, for other reasons, appellate review is not sufficiently utilized, the test can only be made by analyzing the spirit in which the public accepts the trial court's work.

In the trial of traffic cases, circumstances have compelled the courts to modify many of the procedural safeguards that apply in the trial of other crimes. Added to this compulsion of circumstances has been the influence of the theory that traffic courts should assume educational and rehabilitative responsibilities toward the defendant individually and the public generally. Finally, perhaps, the growth of administrative law to the status of full partnership with other segments of the legal system has had a considerable effect upon the search for new techniques and procedures to be used in handling traffic cases.

The result of changes made in response to these forces has varied depending upon which combination of factors motivates the court. However, conditions now prevailing in traffic courts indicate that, with rare exceptions, the changes that have been made in the name of greater judicial efficiency have at the same time made it more difficult for traffic courts to preserve the ideal of fair trial. The motoring public is generally disinclined either to try cases or appear as witnesses in traffic court. The "pay-it-and-forget-it" attitude is expressed by unnecessarily and unjustifiedly pleading guilty in court or in the violations bureau. In the matter of procedure, innovations have seldom worked as well in practice as they appeared in theory, and have lacked complete acceptance by the public. Traffic court judges have said that their decisions produce "substantial justice," but the individual defendant, whose case is to him the most important matter on the court's docket, does not think of fair trial in those terms.

So the dilemma of the traffic court is that in their effort to become efficient in handling their daily case load and inspiring public support for community traffic safety, they have departed too far from the standards expected of courts in the trial of criminal cases. And yet they cannot return to the procedures and ways of other criminal courts if they hope to handle their case load and function

as educational and rehabilitative agencies in the cause of traffic safety. Expressed in other terms, it might be said that traffic cases are currently being handled under procedures and conditions that are more in the nature of administrative proceedings than judicial proceedings, and that traffic court judges must shortly decide whether they will continue as a part of the judicial system at the sacrifice of the ideal of fair trial, or whether they will find their place in the legal system as administrative tribunals where they can carry out their responsibilities free from many of the limitations that judicial standards impose.

Two ways out of this dilemma may be suggested. One, as has already been indicated, would involve the reclassification of most traffic law violations as breaches of the conditions upon which the driver's license is granted rather than misdemeanors under the criminal code. As a result, traffic cases could be handled in a system of administrative tribunals instead of local courts. This quasi-judicial function could then be integrated with other functions of the administrative agency, and combined easily and naturally with those educational and rehabilitative activities that are now recognized as part of the administrator's general responsibility.

Such a plan has many attractive aspects, but may be too bold a step for many state governments to take. Moreover, there is presently a wide gap between the need to rehabilitate problem drivers and the means available to carry on such work. Some of this deficiency is attributable to the lack of basic research on the problems of driver skills and psychology. As this gap is closed, the time may come when it will become possible to more effectively combine the processes of adjudication and rehabilitation and assure the success of such a combined operation.

A second course of action would seem to give promise of improving traffic court justice more immediately. This would be a movement in the direction of eliminating many of the technical and minor traffic rules from the traffic code, and making those remaining on the statute books more flexible and realistic. The typical traffic code today contributes in two ways to making fair trial in traffic court more difficult. It results in bringing too many persons before the 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. As a result, the courts are placed in the position of working to improve the breed of the motoring public instead of performing the *judicial* function of trying and punishing persons whose acts have endangered public safety. Also, to the ex-

tent that traffic rules have tended to become absolute standards of conduct laid down by statute, they have narrowed the area of inquiry that is possible in a trial. In the nature of things, highway traffic moves in accordance with standards of what is reasonable and prudent under the circumstances, yet in traffic court the defendant is frequently judged by standards of conduct arbitrarily set forth by the legislature. Traffic law reforms which eliminated these two major handicaps would go far toward making it possible for traffic courts to function more truly as judicial tribunals and restore faith that the right of fair trial is as readily available to the citizens in his role of a motorist as it is to him in his other contacts with the law.