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IMPROVING THE ADMINISTRATION OF JUSTICE IN TRAFFIC COURT

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THE IMPORTANCE of the traffic court in the framework of the administration of justice cannot, and decidedly must not, be overlooked or underrated. For more than ninety per cent of the Americans who come into contact with the courts, their appearance in traffic court is the only occasion they will have to personally observe the administration of justice. This is so regardless of their business, profession, or occupation. On a mundane level, the practicing attorney should recognize this fact as well; whatever else his clients do, in all likelihood they drive motor vehicles and thus could well be potential defendants in traffic court.

Today in Chicago the traffic court judge may sit in judgment at any given moment on any one of the millions of persons who must use the streets and highways of the city. The impact of the court thus touches the lives of all persons, whether licensed operators, chauffeurs, passengers, or pedestrians. Most people think of traffic courts only in terms of places where violators are, for the most part, found guilty and fined or jailed. This narrow (and, fortunately, decreasingly prevalent) view overlooks the implications of what happens as a consequence of the way in which traffic cases are adjudicated. The well-demonstrated truth of the matter is that what happens to the citizen in traffic court can and will influence his at-

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titude toward law enforcement, toward the entire judicial system, and toward the entire system of laws and justice. Thus, every effort which improves the degree of justice in the traffic court enhances, in the minds of the general public, the entire image of our system for dispensing justice. The increase in respect for traffic laws creates as an inevitable by-product respect for all laws and the administration of justice. At the same time, this increase in respect for the traffic laws carries with it the promotion of traffic safety through greater voluntary compliance with rules of the road. It was for these reasons that Supreme Court Justice Tom C. Clark spoke not with hyperbole, but with sincerity, when he said that "[t]here can be no more important court in this whole land than the Traffic Court."[1]

Initially, this article will consider ways and means of achieving improvement of policies, procedures, and practices in traffic courts. Considerable mention will be made of the experience had, and progress and improvement achieved, in the Traffic Division of the First Municipal District of the Circuit Court of Cook County—the Chicago Traffic Court. The Chicago Traffic Court has thrice received the American Bar Association's highest commendation,[2] and recently was cited as the outstanding traffic court in the United States.[3] The recommendations set forth throughout this discussion, therefore, have obviously been proven sound by experience. Admittedly, Chicago is a populous jurisdiction. But, it is equally certain that the problems and pitfalls of a traffic court are basically the same in nature whether the court serves a metropolitan area the size of Chicago or a small rural community. A citizen appearing in a small-town traffic court can react to the system of courts and justice in the same way as a citizen who appears in a large-city court. Notwithstanding the size of his jurisdiction, a judge sitting in any traffic court could be sitting on a "powder keg" which could explode at any time. And there is much an individual court can do,

1. *Justice—From the Traffic Court to the Supreme Court*, address by the Honorable Tom C. Clark, Associate Justice of the United States Supreme Court, American Bar Association's Northwest Regional Meeting, September 17, 1965, Seattle Post-Intelligencer, September 17, 1965.

2. American Bar Association Traffic Court Award (Group I), First Place 1967-1968, First Place 1968-1969, and First Place 1969-1970, "For Outstanding Progress in the Improvement of Traffic Court Practices and Procedures."

3. Schiller, *Best Traffic Court in the Nation*, READERS' DIGEST, April, 1970, at 219.

again regardless of size, to achieve improvement by its own efforts.

LEGAL ASPECTS: DUE PROCESS IN TRAFFIC CASES

As a point of departure, a relevant consideration is that of the legal approach to be taken in traffic cases. Perhaps this can most effectively be done by analyzing what a traffic case and the traffic court are not.

There are certain tendencies which decidedly should not be interjected into, nor inflicted upon, a traffic case or the traffic court. One tendency, which arises from time to time in traffic court, is an endeavor to inject civil tort aspects of traffic accident cases into the criminal proceedings, *i.e.*, to use the traffic court as a civil collection agency. Another tendency is to reclassify a traffic offense as a non-criminal act and, in the process, effectuate a shortcut of basic procedural rights. Still another is the shocking and extreme notion, offered occasionally, that traffic cases should be heard by an administrative agency rather than by a court. All of the foregoing tendencies have certain salient features in common. They all arise from ill-considered notions of expediency; they all attack or deprecate the standing of the traffic court; and they all are contrary to due process of law.

There probably is not a traffic judge alive who has not, in a moving violation case involving a collision, heard efforts made to dismiss the violation proceedings on the grounds that damages were settled, or observed attempts to use the traffic court proceedings as a vehicle for the prosecution of a civil case. In such instances someone is unwittingly seeking to abuse the responsibility and function of the court in traffic violations. Such abuses, if permitted in collision cases, create the danger of being carried into non-accident cases.

The difference between the criminal case and the civil case is easily recognizable. In one, the parties-litigant consist of the community and the violator; the wrong committed is a violation of public rights, and redress lies in a penalty paid to the public body. There, the penalty is levied to deter this and other offenders from future similar violations. In the civil case the parties-litigant are the party who has suffered damages and the party who has acted wrongfully or negligently; the wrong committed is a violation of private rights,

and redress lies in the payment of damages to the aggrieved individual to make him whole. Moreover, the civil case contains elements not present in the criminal proceedings. When sued for damages, the defendant has available such defenses as the contributory negligence of plaintiff and lack of proximate cause. He may also contest the extent of damages. Such issues may not be raised in the criminal case. If a defendant in traffic court is, in effect, coerced into settling the civil damages, he is being deprived of his right to present these civil case defenses.

The typical traffic violation is a *malum prohibitum* offense with the sole issue being whether or not the defendant committed the prohibited act. Nowhere do traffic laws provide for a defense of "no accident."[4] Too often, in practice, the aspects of the criminal case are clouded by the civil aspects. This intermingling affects the evidence, proof, and procedure in the criminal case—all to the disadvantage of the prosecution, the defense, and the court.

A number of decisions dwell on what the position of the court and the attorneys should be in a criminal action. The defense of civil satisfaction of the debt was held not to be available to the defendant in a prosecution for theft by deception.[5] The filing of criminal usury complaints by the prosecutor, and the continuance of such cases to bring about restitution by defendant to his victims, was deemed an abuse of the criminal process.[6] An agreement by the county attorney not to prosecute on the basis of defendant's agreement to make restitution could not excuse the crime already committed.[7] Restitution, or offer of restitution, is no defense to a criminal charge.[8] An attorney who cooperated and participated in the filing of a criminal charge of bigamy in order to obtain advantage in a civil suit for divorce was held guilty of a breach of legal ethics and was suspended from practice for a year.[9] Contributory negligence by the victim has been held to be no defense to a criminal traffic case.[10] As stated by a Georgia court:

4. Campbell v. District of Columbia, 229 A.2d 157 (D.C. App. 1967).
5. People v. Alba, 46 Cal. App. 2d 869, 117 P.2d 63 (1941).
6. Harris v. Municipal Court, 209 Cal. 55, 285 P. 699 (1930).
7. Heartsill v. State, 341 P.2d 625 (Okla. Crim. 1959).
8. Broxson v. State, 192 So. 2d 511 (Fla. App. 1966).
9. *In re* Cohn, 46 N.J. 202, 216 A.2d 1 (1966).
10. State v. Long, 91 Idaho 436, 423 P.2d 858 (1967).

A criminal trial for infraction of traffic laws does not involve such matters as the relative diligence or negligence of parties to a collision, but concerns only whether or not the defendant on trial is guilty of the violation with which he is charged.[11]

Having eliminated the possibility of a traffic case being a civil collection case or the traffic court being a collection agency, what then is a traffic case? In almost every state, where the traffic offense charged is a violation of state statute, there is little difficulty. The state penal or vehicle codes ordinarily define these as misdemeanors.[12] The problem is more likely to exist in municipal ordinance cases or "New York infractions."

An overwhelming number of cases support the proposition that regardless of what name or classification be given to minor offenses, if penalties may be imposed, then the defendants are entitled to all protections afforded by the due process rules of criminal procedure.[13] In a prosecution for an alleged traffic misdemeanor the defendant is afforded the presumption of innocence.[14] The state must prove him guilty beyond a reasonable doubt.[15] He is entitled to be represented by counsel,[16] and in many cases is entitled to a court-appointed counsel if indigent.[17] It has been held that he is entitled to be advised of his right to counsel at trial.[18] If charged with a serious traffic violation he is entitled to the benefit of the *Miranda* rule when arrested.[19] He has the right to be charged by a sufficient accusation.[20] He may not be prosecuted twice for the same offense.[21]

11. Pass v. State, 95 Ga. 510, 98 S.E.2d 135 (1957).

12. *E.g.*, ILL. REV. STAT. ch. 95½, § 233 (1969).

13. City of Pueblo v. Clemmer, 150 Colo. 546, 375 P.2d 99 (1962), and cases cited *infra*: notes 14-26 and 34-40.

14. State v. Hoben, 256 Minn. 436, 98 N.W.2d 813 (1959); State v. Tarquinio, 3 Conn. Civ. 566, 221 A.2d 595 (1966).

15. State v. Goodman, 8 Ohio App. 2d 166, 221 N.E.2d 202 (1966); Matthews v. State, 414 S.W.2d 938 (Tex. Crim. 1967).

16. Taylor v. City of Griffin, 113 Ga. 589, 149 S.E.2d 177 (1966); Seattle v. Buerkman, 67 Wash. 2d 537, 408 P.2d 258 (1965); *In re* Johnson, 42 Cal. Rptr. 228, 398 P.2d 420 (1965).

17. Dawson v. Los Angeles, 342 F.2d 986 (9th Cir. 1965); ILL. REV. STAT. ch. 38, § 113-3 (1969).

18. *In re* Johnson, *supra* note 16; City of Toledo v. Frazier, 10 Ohio App. 2d 51, 226 N.E.2d 777 (1967).

19. State v. Tellez, 6 Ariz. App. 251, 431 P.2d 691 (1967); State v. Randolph, 241 Ore. 479, 406 P.2d 791 (1965); Samuels, *The Impact of Miranda in Traffic Cases*, N.Y. L.J. (Sept. 17-18, 1968).

20. People v. Griffin, 36 Ill. 2d 430, 223 N.E.2d 158 (1967).

He has the right to a speedy trial[22] free from prejudicial error, just as if he were being tried for a felony.[23] The prosecutor may not comment on his failure to testify.[24] If he is acquitted the prosecution may not appeal;[25] and if he is convicted he has the right to be heard in mitigation.[26]

In the majority of states there is no appreciable procedural difference between the treatment of state law violations and municipal ordinance violations. This is because the penalties are generally the same.[27] However, in Illinois, violations of municipal traffic ordinances are punishable by fine only.[28] The Illinois approach has been to regard ordinance violation cases as "quasi-criminal" and endowed with many of the aspects of non-criminal cases.[29] For example, the city is required to prove its case by a preponderance of evidence rather than beyond a reasonable doubt;[30] the city may appeal from a judgment acquitting the defendant;[31] the pleading requirements are not as stringent as in a misdemeanor case;[32] and, just recently, an Illinois appellate court deemed the speedy trial requirement of the so-called "120-day rule" *probably* inapplicable to ordinance cases.[33]

On the other hand, the reviewing courts in Illinois have indicated

21. State v. Gladden, 274 Minn. 533, 144 N.W.2d 779 (1966); State v. Hoben, *supra* note 14; State v. Mayes, 245 Ore. 179, 421 P.2d 385 (1966).

22. Caputo v. Municipal Court, 184 Cal. App. 2d 412, 7 Cal. Rptr. 435 (1960); State v. Saunders, 2 Conn. Civ. 20, 197 A.2d 533 (1963).

23. State v. Gegen, 275 Minn. 568, 147 N.W.2d 925 (1967); People v. De Groot, 108 Ill. App. 2d 1, 247 N.E.2d 177 (1969).

24. *E.g.*, People v. Knutson, 17 Ill. App. 2d 251, 149 N.E.2d 461 (1958).

25. Toledo v. Crews, 174 Ohio St. 253, 188 N.E.2d 592 (1963).

26. People v. Louis, 112 Ill. App. 2d 356, 251 N.E.2d 373 (1969); People v. Tompkins, 112 Ill. App. 2d 251, 251 N.E.2d 75 (1969); People v. Smice, 79 Ill. App. 2d 348, 223 N.E.2d 548 (1967).

27. Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958); State v. Hoben, *supra* note 14.

28. ILL. REV. STAT. ch. 24, § 1-2-1 (1969).

29. Chicago v. Lewis, 28 Ill. App. 2d 189, 171 N.E.2d 70 (1960); Maywood v. Houston, 10 Ill. 2d 117, 139 N.E.2d 233 (1956).

30. Chicago v. Joyce, 38 Ill. 2d 368, 232 N.E.2d 23 (1967); Chicago v. Carney, 34 Ill. App. 2d 303, 180 N.E.2d 729 (1963).

31. Evanston v. Waggoner, 90 Ill. App. 2d 5, 234 N.E.2d 354 (1967); Maywood v. Houston, *supra* note 29.

32. People v. Stout, 41 Ill. 2d 292, 242 N.E.2d 289 (1968).

33. Midlothian v. Walling, 118 Ill. App. 2d 358, 255 N.E.2d 23 (1970).

that an ordinance violation case has a number of features that would require a modicum of criminal procedural due process. A defendant in an ordinance violation proceeding need not testify against himself if he chooses to remain silent.[34] He is entitled to know what he is being charged with,[35] and, in 1969, an appellate court ruled that the charge of "negligent driving" in the language of the ordinance was insufficient unless particulars of the offense were also alleged.[36] He is entitled to protection from unreasonable search and seizure.[37] If he is fined and is unable to pay it, the civil insolvent debtors law does not apply.[38] Also, the appellate court ruled recently that a defendant charged with disorderly conduct in violation of a city ordinance was deprived of due process when she was not permitted to make a telephone call while in custody.[39] The Washington Supreme Court ruled that a defendant in a city ordinance parking violation case was entitled to be confronted by his accuser.[40] In the words of the California Supreme Court, in a traffic case "there can be no impairment of the constitutional rights of any defendant, however minor his crime."[41]

What of the proposals to "declassify" traffic offenses, as typified by the "New York infraction" concept?[42] An argument for "declassifying" traffic offenses is that the traffic violator is not a "criminal." By reclassifying a traffic case and removing it from the penal category, congestion in court calendars can be avoided, especially in the area of excessive jury demands. To this, it is submitted in rebuttal that the traffic violator is not *in fact* regarded by society as a "criminal."[43] Secondly, the figures on jury demands do not support the claim that congestion arises from jury trials in minor violations.[44]

34. Chicago v. Berg, 48 Ill. App. 2d 251, 199 N.E.2d 49 (1964).

35. Chicago v. Stringfield, 37 Ill. App. 2d 344, 185 N.E.2d 381 (1963).

36. People v. Mowen, 109 Ill. App. 2d 62, 248 N.E.2d 685 (1969).

37. Chicago v. Lord, 3 Ill. App. 2d 410, 122 N.E.2d 439 (1954).

38. Chicago v. Thomas, 102 Ill. App. 2d 143, 243 N.E.2d 512 (1969).

39. Chicago v. Harmon, 117 Ill. App. 2d 361, 254 N.E.2d 573 (1970).

40. Seattle v. Stone, 67 Wash. 2d 886, 410 P.2d 583 (1966).

41. *In re* Johnson, *supra* note 16, at 235, 398 P.2d at 427.

42. NEW YORK VEHICLE AND TRAFFIC LAW § 155 (McKinney 1970).

43. Consider the typical form of application for public employment: "Have you ever been convicted of a crime other than a traffic offense?"

44. *See, e.g.*, CALIFORNIA JUDICIAL COUNCIL, ANNUAL REPORTS.

Thirdly, jury trials in most minor offenses can be eliminated without the creation of a new category of offenses.[45] Finally, the latest proposals for "infractions" state that such other procedural shortcuts as the elimination of the right to assigned counsel for indigents "and others as the occasion arises. . ."[46] are possible thereunder. This notion of shortcuts "as the occasion arises" is contrary to the principle that there can be no impairment of the fundamental constitutional rights of *any* defendant, however minor his crime. This principle was enunciated by the California Supreme Court,[47] where the foregoing proposal was promulgated.

To declassify traffic offenses in such a manner would occasion only short term expediency. Not only would it tend to lessen one's appreciation for the seriousness of traffic laws and the traffic problem (and if 56,000 highway deaths a year is not "serious," nothing is), but it could well conflict with the Constitution.

Judges and lawyers must be alerted to the existence of another extreme proposal lest our system of jurisprudence be jeopardized. This approach is similar to one that assumes that the cure for a patient with a headache is to kill the patient. It is the "administrative tribunal" proposal. It has been couched in beguiling language, and occasionally has been seriously considered by well-meaning, though misinformed, individuals. In its basic form, it represents an attitude that courts, judges, lawyers, and the Constitution are outmoded and tiresome. The proposal recites: "The existing mode of handling traffic cases is outmoded. Traffic cases should be handled by a specially created administrative agency. The person who commits a traffic offense is not a criminal and should not be treated—even procedurally—as a criminal."[48]

Constitutionally, such proposed handling of traffic cases would flagrantly violate the basic principle that judicial functions are within

45. According to Chief Justice Warren, the "right to jury as heretofore enjoyed" means (a) was the offense triable by a jury at common law? and (b) is the possible penalty substantial? Cheff v. Schnackenberg, 384 U.S. 373 (1966). *See also, In re* Estate of Melody, 42 Ill. 2d 451, 248 N.E.2d 104 (1969).

46. California Judicial Council, Revised "Infractions" Proposal (Jan., 1967), n.6.

47. *In re* Johnson, *supra* note 16.

48. Reynolds and Samuels, *Answer to Proposal that Traffic Cases Be Tried by Administrative Tribunals*, monograph presented at midyear meeting of American Bar Association Standing Committee on Traffic Court Program, Feb. 5, 1966.

the province of the courts. Further, it violates the constitutional requirements of due process. Regardless of what name is given to the offense, our American constitutional system requires a fair trial in a court so constituted as to afford "due process" in the first instance.[49] It distills down to this: a traffic court is a court of law —it must be conducted as such.

PROCEDURES: DIGNITY, FORMALITY AND CONSISTENCY

Recognizing that the traffic court is a court of law, and must be conducted as one, an appropriate place to start improving the administration of justice is in efforts of the court to operate as and maintain an appearance of a properly constituted court of law.

First, the court must promulgate a set of ground rules pertaining to procedure within the court and designed to ensure formality and dignity in the courtroom. Concurrently therewith, the court should by such ground rules enhance its service to those who appear before it. The court systems in a number of states have been fortunate to have rules of procedure in traffic cases promulgated by their respective Supreme Courts—as in Illinois—although these statewide rules must be supplemented by local rules applicable to the operation of an individual court.[50]

At one time the Chicago Traffic Court did leave much to be desired in the way of regularity, formality, and dignity of its procedures. At the statewide level, the Illinois Supreme Court promulgated rules applicable to traffic cases.[51] But, while statewide rules are indispensable to a court system, they do not in themselves ensure proper procedures within an individual court. Accordingly, over the past several years the Chicago traffic judges found it necessary to confer and, based upon their consensus, from time to time issue General Orders and memoranda as the needs arose.

Early in 1970, the Chicago Traffic Court prepared and published

49. Tumey v. Ohio, 273 U.S. 510 (1927); Roberts v. Noel, 296 S.W.2d 745 (Ky. 1956); State *ex rel.* Osborne v. Chinn, 146 W. Va. 610, 121 S.E.2d 610 (1961); Williams v. Brannen, 116 W. Va. 1, 178 S.E.2d 67 (1935).

50. ECONOMOS, TRAFFIC COURT PROCEDURE AND ADMINISTRATION 53 (1961).

51. ILL. SUP. CT. R. 501-600, adopted by Supreme Court order October 26, 1967, eff. January 1, 1968, ILL. REV. STAT. ch. 110A, §§ 501-600 (1969).

its Manual of Procedures[52] (hereinafter referred to as the "Manual.") The introduction to the Manual states:

> This Manual has been prepared by the Judges of the Magistrates' Division assigned to the Chicago Traffic Court—the Traffic Division of the First Municipal District of the Circuit Court of Cook County—for the guidance and benefit of those now or hereafter sitting in the Chicago Traffic Court. The practices, procedures and policies discussed herein represent the consensus of those sitting in this Court.[53]

The practices, policies, and procedures set forth in the Manual are not newly created by the Manual. They represent a restatement of those approaches instituted over the past several years consistent with the needs of the court, the experiences of the court, and the best thinking of the judges of the court. This Manual is the first instance in which these practices, policies, and procedures have been gathered together and organized into a unified whole. The expressed purpose is:

> to review some of the problems that require attention and to anticipate some of the future ones inasmuch as our Court absorbs a constantly increasing caseload . . . . [It is] in the interest of maintaining consistency and regularity of procedures and administration [that] this Manual has been prepared.[54]

Chapter I of the Manual deals with procedure in the courtroom prior to trial. The steps to be followed from the time defendants and witnesses arrive in the courtroom to the calling of cases for trial are described. Special mention is made of the need for a formal opening of each court session and the requirement that the judge begin every session with a short opening statement.[55] This opening statement covers the courtroom procedure, the legal rights of the defendants, and the need for compliance with traffic laws.

The use of short opening statements by traffic judges is highly recommended. This has been found to effect more frequent favorable reactions from those in the courtroom than almost anything else done by the judge.[56] Moreover, not only does this result in increased public respect for the administration of justice in the traffic

52. MANUAL OF PROCEDURES FOR JUDGES OF THE TRAFFIC DIVISION, FIRST MUNICIPAL DISTRICT, CIRCUIT COURT OF COOK COUNTY (1970).

53. *Id.* at i.

54. *Id.* at ii.

55. *Id.* at 2, 28-29.

56. *See, e.g.*, Column by Mike Royko, Chicago Daily News, November 4, 1969, at 3, col. 1.

court, but it also has been held sufficient to advise defendants of their legal rights.[57]

Without limiting the judge's discretion, the Manual goes on to prescribe guidelines in the matter of courtroom procedure at trial.[58] When the case is called, the judge is reminded that he has an opportunity to observe the demeanor of the defendant.[59] He is also reminded that, notwithstanding the possibility of a heavy court call arraignment and plea must be taken in open court;[60] witnesses must be sworn in accordance with the Canons of Ethics;[61] the judge may ask questions to clarify but should never prosecute the case;[62] the appearance of "trial by huddle" should be avoided; the judge should avail himself of the opportunity to improve the driving habits of a defendant before him; and memoranda which might be pertinent during the trial are subject to the doctrines of "present recollection refreshed" and "past recollection recorded."[63] To remind the judge that he, and not a non-judicial employee, is in full charge of the courtroom, he is directed to "make sure that his courtroom personnel maintain a high degree of courtesy to the people appearing in the courtroom."[64]

In certain facets of procedure it becomes necessary for the court to balance the rights of both sides in the interests of justice. For example, the right of a defendant to a continuance to prepare his case cannot be repeatedly exercised so as to "delay and harass effective prosecution of the crime."[65] The judge, himself, should be solely responsible for the granting of continuances, and the policies of the Chicago Court as stated in the Manual prohibit *sub rosa* continuances or continuances by persons other than the judge, and contain guidelines to ensure that cases are expeditiously disposed of without depriving a defendant of sufficient time to prepare his

57. State v. Brown, 250 La. 1023, 201 So. 2d 277 (1967); State v. Simmonds, 5 Conn. Cir. 178, 247 A.2d 502 (1968).

58. *Supra* note 52, at 4-7.

59. *Supra* note 52, at 4.

60. *Supra* note 52, at 4.

61. *See*, Ill. Judicial Cannon 33; ABA Cannon 36.

62. People v. McGrath, 80 Ill. App. 2d 229, 224 N.E.2d 660 (1967).

63. *Supra* note 52, at 5, 68-69.

64. *Supra* note 52, at 2-3.

65. People v. Washington, 41 Ill. 2d 16, 241 N.E.2d 425 (1968).

defense. As regards another facet, dismissals for want of prosecution, the Manual sets forth a yardstick for recognizing that while a case may ordinarily be dismissed in the absence of any prosecuting witness, there are exceptional circumstances, such as the defendant's own conduct, militating against this right.[66]

The overcrowding which plagued the Chicago Traffic Court in past years has been virtually eliminated. This has resulted mainly from the addition of new and additional facilities. On occasion, a single courtroom might now become overcrowded for one session because of an unexpected imbalance in caseload between the respective courtrooms, but this would happen in any multi-judge court in spite of the best efforts at calendar control for a number of reasons, such as a police officer's change of assignment. To cope with this occasional situation, a procedure for the transfer of cases between courtrooms has been worked out and has proved efficacious in keeping the length of each session in every courtroom within the scheduled time.[67]

Within the courtroom, after the call of cases is over, it is necessary that the judge complete "post court proceedings." This entails his making certain that his entries on the files correspond with his entries on the corresponding calendar sheets, and that every case file contains his order in his own handwriting. In addition, before "closing out," the judge must order appropriate sanctions against those defendants who failed to appear. "Post-court" steps in the Chicago Court are described in detail in the Manual.[68]

It is readily apparent that an individual traffic court can and should promulgate "local rules" for formality and dignity therein for the improvement of its own procedures. This power, to govern its own procedures not inconsistent with rules of its supreme court, is a valuable inherent power of a court.[69]

66. *See,* ILL. SUP. CT. R. 504; *supra* note 52, at 9.

67. *Supra* note 52, at 14-15.

68. *Supra* note 52, at 16-17.

69. *See, e.g.*, Kolkmann v. People, 89 Colo. 8, 300 P. 575 (1931); Winberry v. Salisbury, 5 N.J. 240, 74 A.2d 406 (1950), *cert. den.*, 340 U.S. 877 (1950). *See also, supra* note 50, at 51-52.

SERVICE TO THE PUBLIC

Another important aspect of administration of justice is in the service the court renders to the members of the public who appear before it. While a defendant's appearance in court is not, for him, a joyous occasion, an efficiently administered traffic court can greatly enhance the image of justice by eliminating as much as possible the onerousness of his appearance.

There is no pressing reason why a defendant cannot ordinarily be tried at his first appearance in court—the return day set forth in the summons or notice to appear.[70] There is no valid reason why, if he pleads not guilty, he must as a matter of course be forced to return on another date. This "trial at first appearance" can easily be afforded by means of an "officer's day in court" system, wherein each police officer who issues traffic tickets is assigned a particular court date, court session, and courtroom for the trials of his tickets. Surprisingly enough, Chicago is virtually the only large city where this is done as a matter of course. The Chicago Police Department, since becoming accustomed to the system, unequivocally endorses it. Recently, the federal government endorsed "trial at first appearance" procedures.[71]

Further, recognizing that most defendants in the traffic court are not represented by counsel, it was deemed appropriate that motion procedures in the Chicago Traffic Court should be made as simple and expeditious as possible, while remaining within the framework of legal procedure. Accordingly, a simplified motion procedure was instituted in 1967, enabling any defendant who has a problem in a traffic case that could be resolved via a motion to file his own informal pleading and have his motion heard at that time by the "Instant Motion Court." This instant motion practice is detailed in the Manual.[72]

While indigent defendants charged with major traffic violations which could result in substantial jail sentences are entitled to be represented by a public defender[73] (there is a public defender regularly

70. *Supra* note 50, at 58-59, 145.

71. National Highway Safety Bureau, *Traffic Courts*, HIGHWAY SAFETY PROGRAM STANDARDS UNDER THE HIGHWAY SAFETY ACT OF 1966 § 4.4.7 (1968).

72. *Supra* note 52, at 22-23.

73. ILL. REV. STAT. ch. 38, § 113-3 (1969).

assigned to the Chicago Traffic Court), a great need has long existed for those many people who are able to afford counsel or whose cases were not of sufficient gravity to entitle them to the public defender. In past years, the court suffered from the incidence of solicitation of cases by a small group of attorneys who frequented the Traffic Center with their agents and "runners." This solicitation has been eliminated by such direct court action as exclusion of the offending parties or contempt citations. To enable any party who desires counsel and does not have one the opportunity to consult with a reputable attorney, the Traffic Court Lawyer Reference Plan was recently instituted, whereby the Chicago Bar Association makes lawyers (regardless of whether such lawyers are members of the Chicago Bar Association or not) available on a regular rotation basis at the Traffic Court for such defendants. This plan is the first of its kind in traffic courts throughout the United States, and well illustrates the contribution toward upgrading a traffic court that the legal profession can make.

These are but a few of the innovations undertaken by the Chicago Traffic Court for the benefit of the citizenry. They can serve as examples of what can be done to serve the public.

CORRECTING THE VIOLATOR

Too often traffic courts in the United States have been tagged with a reputation of being revenue-oriented. The reputation and public image of the court can only be hurt by an approach which assumes that the court is in operation for the purpose of raising the maximum possible monies in fines and court costs for the benefit of the local government. Justice is not served, nor driving habits improved, by an approach which imposes set fines for every violation regardless of circumstances and regardless of the nature of the offender. Too many jurisdictions employ a system whereby most defendants can answer for their violations merely by paying fines over a counter or by posting and forfeiting bonds. Whatever the form, if this procedure is used in most cases, it generates a "violate-for-a-price" attitude among the driving public and lends credence to the feeling that the traffic court is in business as a revenue-producing agency.

Thus, it is the stated and announced policy of the Chicago Traffic Court that "the aim of the Traffic Court in imposing penalties is to correct and educate, and to impress defendants with the need for observance of the traffic laws."[74] In addition to fines, Chicago Traffic Court judges employ such penalties as requiring enrollment in the court's Driver Improvement School, psychiatric referral, probation techniques, and such "instant driver improvement" by judges as assignment of essays, attendance at court sessions, and the like.

The Chicago Traffic Court operates its Driver Improvement School for the benefit of those defendants referred thereto by judges of the court. Such defendants are so referred because of some lack in their ability to observe traffic laws or, where the court deems it appropriate, for the correction of their driving habits. Last year 16,000 defendants were referred to and successfully completed the Driver Improvement School course.

Because elderly drivers in Illinois are faced with complete reexamination for driver license renewals, the court has recently inaugurated its "Senior Citizen Program." Here, special sessions of the Driver Improvement School are devoted to a thorough refresher of the older driver's knowledge of traffic laws and requisite skills so that he may keep abreast of the increasing complexity of the traffic problem and of the rules of the road.

Since the court cannot properly correct and educate a defendant who does not personally appear before the court, defendants charged with hazardous violations should be and are required to appear in person. In Illinois, mandatory court appearances are covered by a rule of the Supreme Court.[75] In the absence of a statewide rule, there is no reason why a local court could not promulgate such a rule.[76]

JUDICIAL EDUCATION

For a traffic judge to best perform his judicial duties, he must naturally possess an adequate legal background. It is certain that he should also be knowledgeable in traffic laws and the numerous factors which constitute the traffic problem. The experiences of citi-

74. *Supra* note 52, at 18.
75. ILL. SUP. CT. R. 551.
76. *Supra* note 69.

zens who have appeared before untrained traffic judges throughout the United States are legend and the reactions thereto highly critical.

To fill the need for trained traffic judges in America, yeoman service has been carried on for twenty-five years by the American Bar Association Traffic Court Program which sponsors regional and state traffic court conferences for traffic judges, prosecutors, and court personnel.[77] In recent years, a number of states have officially joined in these efforts by setting up regularly held statewide conferences with the expenses of attendance paid by the state.[78]

In addition to making such continuing judicial education available at conferences, the Chicago Traffic Court instituted a program of one-day training seminars held at the court. These seminars have served to update the judges' knowledge of problem areas in traffic laws, such as driving under the influence of alcohol cases and procedural due process. This type of activity could easily be duplicated in non-metropolitan areas, with a number of "small town" judges attending from within the same area in a state.

The Manual of the Chicago Traffic Court, in addition to delineating procedures and policies, also represents special effort to update judges' and attorneys' knowledge of the traffic laws. Half of the Manual is devoted to a detailed discussion of the latest developments in Illinois traffic law, with extensive consideration of pertinent recent cases. Not only has this finger tip availiability of the law been extremely helpful to the judges, but also it has benefited the traffic prosecutors and defense counsel as well.

ADMINISTRATION: THE "FIX" PROBLEM

St. Paul, nearly two thousand years ago, exhorted men to "abstain from all appearance of evil."[79] This exhortation has been valid and sound throughout the ages, and has been judicially reflected in Canons of Ethics and Rules of Judicial Conduct. In the words of the Illinois Rules, a judge must "avoid impropriety and the appearance

77. This fact is personally known to the authors from their having attended such conferences. For a fuller description, *see* ABA TRAFFIC COURT PROGRAM, *Services Available* (1967).

78. For example, Illinois and California.

79. 1 *Thessalonians* 5:22.

of impropriety."[80] Departures from this basic axiom have resulted in horrendous "black eyes" for courts and the administration of justice.

Situations which could subject a traffic court to embarrassment or actual scandal are possible in a court of any size. Traffic court "fix" scandals are not confined to large cities. Concededly, ten or fifteen years ago an examination of newspaper articles from Chicago would disclose accounts of court personnel indicted and fired, files "pulled," cases fixed, solicitation of cases openly and notoriously carried on, and practically every conceivable irregularity imaginable. At that time most people appearing in the court felt that they somehow had to fix their case in order to receive a fair trial. Whether this opinion was justified or not, it was the public's view of the court.[81]

Fortunately, this is no longer the reputation of our court but it was a long hard struggle to overcome that gruesome image. A detailed account of the steps taken to eliminate the "fix" image would extend far beyond the pages available for this discussion. However, a capsule summary of some of the avenues of approach, which could apply to any traffic court, would be useful.

First, it is essential that the responsibility of administering a traffic court lie with the judge (or, in a multi-judge court, the chief judge or supervising judge). All nonjudicial personnel attached to the court must be under the direct supervision and control of the judge.

Second, there should be a system of procedural and administrative safeguards and cross-checks. For example, every word spoken in a courtroom in the Chicago Traffic Court is recorded on tape and preserved. A judge's order, in his own writing, is entered in three places—the file, the file tab, and the calendar sheet—as well as recorded on an IBM computer card. The Court has its own undercover investigators, whose presence keeps all personnel alert.

Even without the financial resources to maintain computerization, recording, and investigative staffs, a system of cross-checks is possi-

80. ILL. SUP. CT. R. 61(c)(4), eff. March 15, 1970.

81. "The Traffic Court Image," address by the Honorable Raymond K. Berg, Supervising Judge of the Chicago Traffic Court, 1970 Western Regional Traffic Court Conference, Los Angeles, January 30, 1970, in Los Angeles Metropolitan News, January 30, 1970.

ble and desirable. For example, it is a simple task for the judge, the courtroom prosecutor, and the courtroom clerk each to maintain daily disposition reports, all of which must correspond with each other.

Third, the problem of "ticket-pulling" or "ticket-fixing" can be resolved whether the court's operation is possessed of a sophisticated computer system or employs a manually-kept ledger system. The resolution of this problem can be found in the use of a set of multicopy, pre-numbered traffic tickets, with a copy for each of the involved persons or agencies—the court, the driver licensing authority, the arresting officer, the police department, and the defendant. With all these people involved, it is virtually impossible to "lose" or to "fix" a ticket. Coupled with this, the court must maintain a master control and disposition ledger to set forth the status of every pre-numbered ticket and book of tickets issued to a police officer. This ledger can be spot checked revealing instantly the numbers on any tickets which need an explanation.[82] Such ledger should be subject to an internal audit as to status and disposition of each ticket. In a highly computerized manner this is what is done in Chicago, both within the Court and the Police Department. The use of multicopy, pre-numbered tickets, with the accompanying ledger and audits promotes the requisite case accountability which is sometimes popularly referred to as "no-fix tickets."

Fourth, the court should be required to submit regular reports to other governmental agencies, and to the state supreme court or court administrator. Further, an external audit should be conducted, at least annually by an independent agency, as is done in Chicago.

Finally, a major problem facing any large traffic court, and one which faced the Chicago Traffic Court, is a backlog of unsatisfied parking tickets. A citizen who avoids paying a succession of parking tickets without ever appearing in court soon regards the law as something he can evade with impunity. He is, then, a "scofflaw."[83] If such a backlog of unsatisfied tickets exists, steps must be taken

82. For a comprehensive discussion on the format and use of such a ledger, *see supra* note 50, at 118.

83. Failure to serve warrants has been described as the "automatic fix." *See supra* note 50, at 96-97.

to bring the "scofflaw" offenders to court and have these tickets paid or otherwise satisfied. In Chicago, by means of the special "Scofflaw Court" established in the Traffic Court, thousands of multiple ticket violators have been brought to justice. Even more important than the millions of dollars realized in fines has been the effect on the driving public; prompt payment of parking tickets has become the rule rather than the exception, evidenced by a noteworthy increase in voluntary compliance with traffic ordinances. While unsatisfied tickets and unserved warrants are not ordinarily part of intentional improprieties, their effect on respect for traffic laws is equally detrimental. It is recommended to every traffic judge that he make certain that there is a system of regular follow-ups on every unpaid fine or unsatisfied warrant.

SUPPORT FROM THE LEGAL PROFESSION AND THE PUBLIC

Practicing attorneys in a community too often are reluctant to appear and defend their clients in traffic courts, particularly if the client is charged with a "minor violation." Frequently, this attitude arises from the length of time counsel feels he must wait in court for the call of his case rather than the time actually required for trial. He feels that the cost of his time so spent cannot be met by the fee he can reasonably charge. However, in the Chicago Traffic Court, as a result of the calendar control system now in effect, counsel can appear, answer ready for trial, and try his case all within less than an hour. An attorney decidedly *should* defend cases in the traffic court. Not only is he doing his client a service, but he is also aiding the court in its efforts to maintain high procedural standards.

Outside of the legal profession, the help of interested community groups concerned with traffic safety has been solicited and freely given. The court has taken its message to the communications media with the intention of educating the public to the need for a better traffic court and to enhance public support for court improvements. These media have understood the importance of improving the Traffic Court and have been of great assistance.

In addition to organized citizen groups, interested bar associations, and communications media, traffic judges should have and do have access to community leaders who are genuinely concerned with traf-

fic safety. These community leaders should be of such standing and prestige that their espousal of any legitimate program assures it of success. As an advisory council to the traffic court, a group of these leaders function as a two-way avenue of communication: on one hand, they bring to the judge the best considered opinions and expertise in traffic enforcement and engineering; on the other hand, they serve as a vehicle to promote, among key segments of the public, acceptance of the court's policies. Such a group was organized in Chicago, in 1969, as the "United Council for Traffic Safety."

SUMMARY AND RECOMMENDATIONS

In the foregoing discussion, the authors have attempted to point out the highlights of principles and practical aspects of improving the administration of justice in traffic courts. The principles and propositions expressed, and the recommendations following, are based upon the experience of the Chicago Traffic Court and the findings by the authors as to what has succeeded in other jurisdictions. It is therefore recommended: (1) That judges and attorneys always bear in mind that the traffic court is the court which can "make or break" respect for law and the image of justice, since for most people their appearance in traffic court is their only contact with law and the courts; (2) that it be remembered that the basic problems of traffic courts are the same regardless of the size of the court or the territory served by the court; (3) that the traffic court is a court of law and must be conducted with the dignity and formality appropriate to a court of law; (4) that regardless of what name or classification be given to a traffic offense, a defendant is entitled to those basic procedural guaranties included in "due process"; (5) that judges and other personnel of the traffic court always remember their duty of service is to the public; (6) that the traffic court make rules for the orderly conduct of proceedings in that court; (7) that the judge, or judges, of the traffic court have the authority and responsibility to exercise supervision and control over the personnel of the court; (8) that constant and vigilant administration be exercised by the court not only to avoid impropriety, but also to avoid any appearance of impropriety; (9) that every traffic court institute and maintain constant and regular procedures designed to avoid backlogs in unserved warrants and unsatisfied fines; (10) that the judge

remember in conducting the traffic court that the function of the court is to inculcate respect for the law and improve driving habits, and not to act as a revenue-producing agency; (11) that the traffic judge be particularly knowledgeable in traffic laws and traffic problems in addition to his general legal background, and to this end, that he be afforded specialized continuing judicial education therein; (12) that attorneys, whenever possible, represent their clients in traffic court, and that the legal profession interest itself in encouraging high standards of practice by attorneys in that court; (13) that considerable court improvement can be achieved by the court's own efforts; and (14) that it is indeed possible to achieve improvement in the administration of justice in any traffic court. The court should admit to itself that it needs improvement, it should take steps to effectuate improvements within itself, and it should enlist the assistance and support of other governmental agencies, citizen groups, bar associations, communications media, and experts in the field. Finally, it should constantly maintain its efforts at improvement.

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