U.S. DEPARTMENT OF COMMERCE
National Technical Information Service

PB-254 734

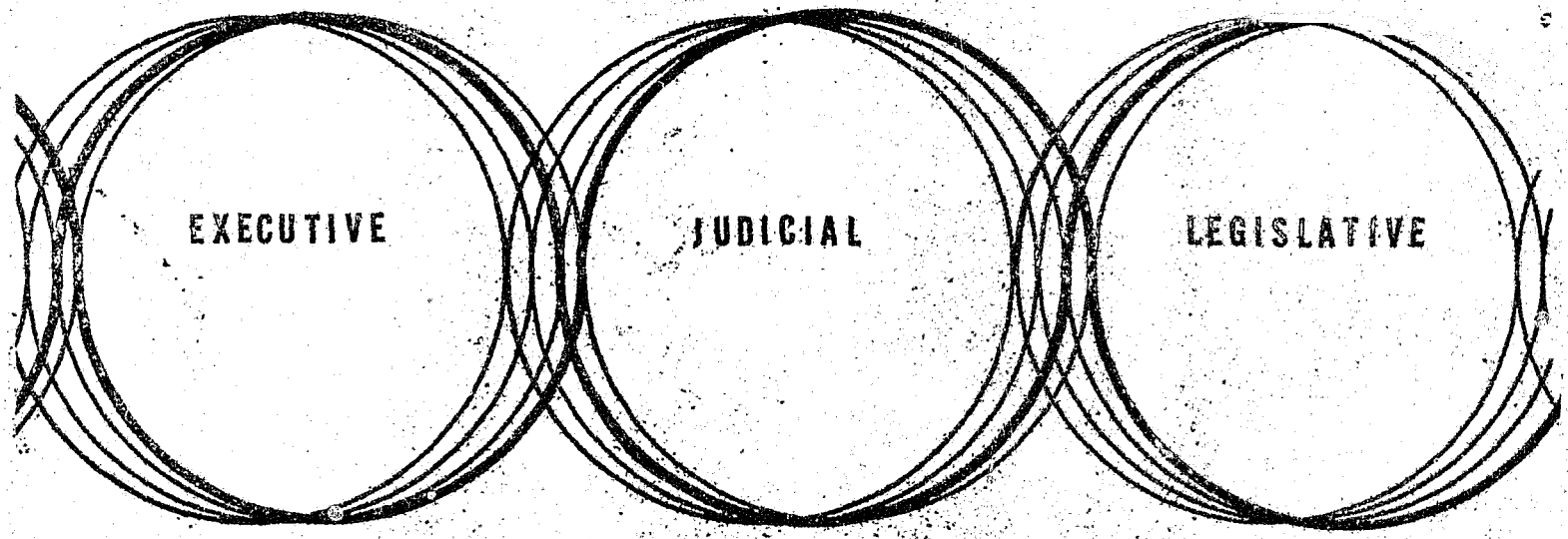
Administrative Adjudication of Traffic Offenses in CA Volume II. Appendices

CA State Dept. of Motor Vehicles

Prepared For
CA State Office of Traffic Safety

April 1976

ADMINISTRATIVE ADJUDICATION OF TRAFFIC OFFENSES IN CALIFORNIA



Vol. II

FEASIBILITY STUDY

APRIL 1976

DEPARTMENT OF MOTOR VEHICLES
HERMAN SILLAS, DIRECTOR

STATE OF CALIFORNIA

BIBLIOGRAPHIC DATA SHEET	1. Report No.	2.	3. Recipient's Accession No.

4. Title and Subtitle
The Administrative Adjudication of Traffic Offenses in California. Vol. II Appendices.

5. Report Date
April 1976

6.

7. Author(s)
Thomas J. Novi

8. Performing Organization Rept. No.

9. Performing Organization Name and Address
California Department of Motor Vehicles
Office of Program Evaluation
Post Office Box 1828
Sacramento, CA 95809

10. Project/Task/Work Unit No.

11. Contract/Grant No.

12. Sponsoring Organization Name and Address
California Office of Traffic Safety (Partial Sponsor)
Post Office Box 865
Sacramento, CA 95804

13. Type of Report & Period Covered
Feasibility Report

14.

15. Supplementary Notes
Prepared pursuant to California Senate Concurrent Resolution 40 (Alquist) in cooperation with the Administrative Adjudication Advisory Committee.

16. Abstracts

The primary study objectives are to evaluate the feasibility of administrative adjudication of traffic offenses reducing the backlog of court cases caused by the increased volume of traffic citations being issued, and to improve traffic safety in California. The objectives will be met by the implementation of more efficient procedures to adjudicate minor traffic cases, and through more effective identification and control of poor drivers. This report analyzes the feasibility of adjudicating traffic infractions administratively in the California Department of Motor Vehicles, rather than in the courts. It explores the costs and benefits associated with administrative adjudication in terms of such areas as traffic safety, the courts, economic impact, legal considerations and public opinion. It concludes that administrative adjudication is both legally feasible as well as economically attractive. In addition, enhanced traffic safety and more effective court resource allocation would likely result. Also, the public reaction was highly favorable.

17. Key Words and Document Analysis. 17a. Descriptors
Traffic Safety; Administrative Law; Accident Prevention; Motor Vehicle Accidents; Government; Legislation; Statutes; Traffic Accidents.

17b. Identifiers/Open-Ended Terms
Traffic Enforcement, Post Licensing Driver Control, Traffic Safety/Driver Control, Systems Analysis, Systems Modeling, Drivers Licensing, Driver Improvement, Negligent Drivers, Deviant Drivers, Traffic Court Adjudication, Traffic Safety Legislation, Traffic Safety Administration, Government Jurisprudence.

17c. COSATI Field/Group

PRICES SUBJECT TO CHANGE

18. Availability Statement	19. Security Class (This Report)	21. No. of Pages
Release unlimited	UNCLASSIFIED	
	20. Security Class (This Page) UNCLASSIFIED	

APPENDIX

TABLE OF CONTENTS

APPENDIX A

Final Report of the Ad Hoc Task Force on Adjudication of the National Highway Safety Advisory Committee

June 1973

FINAL REPORT OF THE AD HOC TASK FORCE ON ADJUDICATION OF THE NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE

June 1973

INTRODUCTION

A special ad hoc task force of nine lawyer members within and appointed by the National Highway Safety Advisory Committee, together with administration staff, has reviewed over a three months' period the present traditional judicial adjudication of traffic violations, innovations in New York, Florida, Virginia, and California, available written materials, and similar findings of other commissions studying present United States methods of traffic adjudication.

EXECUTIVE SUMMARY OF TASK FORCE FINDINGS AND RECOMMENDATIONS

The present traditional lower criminal court processing of traffic violations in the U. S., using sentences of fines and incarceration, evolved for the purpose of determining the guilt or the lack of guilt of an offender charged with a criminal complaint.

Because conviction would involve a jail sentence, adjudication historically has been by the judiciary to accord full protection of constitutional due process. In fact, however, jail sentences are imposed in very few traffic cases and all but the most serious offenses are processed by mail or bail forfeiture. In the present process, self-adjudication and self-sanctioning are the norm.

Findings

- Traffic offense adjudication under the traditional traffic law system is reasonably adequate in the determination of guilt or lack of guilt. However, traffic case processing is beset by many problems and has proved to be less than ideal, in contributing to improvements in traffic safety.

- Traffic offense adjudication as presently constituted has made little demonstrable contribution toward newly formed societal goals of the promotion of traffic safety and the improvement of driver behavior. It is not an adequate subsystem or traffic law system component. It has had little measurable effect in deterring initial or subsequent traffic violation by offenders or other drivers. In this, traditional criminal court traffic case processing is inadequate and ineffective.

- Traffic offense adjudication is a key component of the traffic law system. The promotion of traffic safety depends on adjudication's effectiveness within the system. Traditional traffic case processing does not sufficiently emphasize both selective adjudication and the goals of highway safety and driver improvement through retraining and rehabilitation.

- All traffic offenses do not have the same degree of severity or potential severity; thus, all offenses should not command the same degree of criminal processing and sanction time and resources. Traffic case adjudication inadequately differentiates between the problem driver and the average traffic offender.

RECOMMENDATIONS

To achieve integrated traffic law system components which combine traffic adjudication with traffic safety and improved driver behavior, a new approach to traffic case processing, which contains the following basic features, is recommended:

- Adjudicate a lower-risk category of "Traffic Infractions" by simplified and informal judicial, quasi-judicial or para-judicial procedures.

- Process high-risk offenses criminally.

- Combine "Traffic Infraction" and high-risk criminal traffic offense sentencing with driver improvement and rehabilitation programs.

- Eliminate incarceration as a "Traffic Infraction" sanction.

- Give priority to identifying problem drivers, assigning them to treatment and monitoring the results.

- Create an adequate electronic data processing system to serve police, law enforcement, driver licensing and traffic adjudication; especially for the purpose of identifying the problem driver.

REPORT BACKGROUND

General

The traditional criminal court processing of traffic cases evolved nationally when the only government body available to process these cases was the lower courts and the judges elected and appointed to serve these courts. The punishment for recalcitrant drivers fell within the felony and misdemeanor legislative categories. For many years it was believed that jail confinement or fines or the fear of this punishment coupled with personal appearances before a judge would deter traffic offenders. At that time the volume of traffic cases was not great. As the caseload increased, informal non-criminal case processing methods were adopted. Traffic adjudication was designed to be the key evaluation element in the traffic case disposition process, which consists of law enforcement citation, prosecution of the offense, case adjudication and penalty sanction application on a determination of guilt. Adjudication was intended to provide the legal control and audit of driver behavior in the complex highway safety environment.

With growing motor vehicle registration and numbers of licensed drivers, certain deficiencies and inefficiencies became more evident in the present traditional court processing of traffic cases. To further aggravate this situation, America became an auto-mobile society. While a driver's license as a matter of policy and law is generally a "privilege, and not a right," the license to drive an automobile is the keystone of citizen mobility and frequently a mainstay of economic livelihood.

Traffic cases numerically have escalated and eclipsed the caseload of non-traffic offenses. As much as 80 percent of the caseload (exclusion of parking) of many lower courts is traffic.

Constitutional Due Process

The U. S. Supreme Court has recently ruled that a series of constitutional due process requirements are essential to criminal traffic court trials: elimination of the mayors' courts which assess fines as a revenue source for the political unit of government involved in the arrest; elimination of incarceration for the non-payment of fines; right of trial by jury for other than petty offenses; and right of an appointment of counsel for an indigent for any traffic offense in which there is likelihood of jail confinement. The effect of these decisions has been to make the present system function more slowly and at greater cost, at a time when traffic caseloads were escalating.

Increasing Traffic Offense Caseloads

Until 1968 this Nation has registered annually an increasing rate of highway accidents and fatalities. This has led to public indignation and outcry to do something to stop the highway slaughter. Legislators have reacted by passing laws defining new traffic offenses, by establishing cumulative point systems for traffic violations which can result in license suspension, and by making sentences mandatory for certain serious offenses. More laws led to more law enforcement. Greater law enforcement in turn generates more caseload in the court.

To avoid the loss of license and/or jail confinement, offenders threatened with such sanctions increasingly have resorted to litigation to buy time or interim driving privileges. This in turn has increased court caseloads at the appellate level where more traffic cases in competition with non-traffic criminal and civil cases often contribute to case delay.

Penalties which are mandatory or overly harsh tend to be subverted by police or prosecutors, juries or judges, and such penalties not only encourage more litigation but have proved to be counter-productive in the promotion of traffic safety. Pending litigation, the offender continues to drive without any correction of failures--and, if dangerous, imperils the driving public.

An unplanned subsystem of traffic justice which is not swift, timely, uniform or professionally managed and frequently is negotiable, is unsatisfactory. Alcohol and drug problems have further pyramided caseloads and have introduced into adjudication medical, as well as behavioral, remedial needs.

The Judges

Only a limited number of traffic case judges have any special training or interest in their work. A serious problem has been the lack of adequate traffic judge training programs. A moratorium on the American Bar Association's Traffic Court Program's regional traffic court judge training has recently occurred. Although many individual courts and communities are dedicated to traffic service, this form of judicial activity has not proven sufficiently popular or rewarding to produce a large number of judicial experts trained in traffic law adjudication and highway safety.

Lack of Highway Safety Effectiveness

There is no evidence which demonstrates that the traditional criminal court processing of traffic is highway safety cost effective. However, there is evidence that the offender's appearance in court does not have any positive deterrent effect on subsequent poor driver behavior. Court appearance is more often regarded by the public as an embarrassment, economic nuisance, and inconvenience. While certain individuals can be categorized by State licensing authorities as problem drivers, insufficient screening, adjudication and sanction selection time is applied to them. Nationally, traffic offense processing fails to differentiate between the problem driver and the infrequent traffic offender. To be highway safety cost effective, traffic adjudication should expend greater resources on identifying the problem driver. Timely access to complete and accurate driver record information is essential to this effort.

Retraining and Rehabilitation

Traditional criminal court traffic case processing deals in a high volume caseload which minimizes the beneficial latitude of handling cases on a one-to-one basis. The adversary process inherent in court procedures assists in adjudication of guilt or innocence, but it does not assist

the individual in resolving his unique driver behavioral, personal or medical problems. The Task Force found that the present traditional criminal court processing of traffic cases emphasizes adjudication to the exclusion of driver improvement oriented programs. It should be stressed, however, that some of this is due to the lack of validated state driver improvement programs.

Traffic Adjudication Communication, Coordination, and Integration

Traffic case processing by the judiciary operates independently of the licensing agency. Violation reporting by the courts is sporadic and incomplete. There is a paucity of driver information exchange from licensing authority record files. Judges generally fail or are unable to access the prior driving record of the traffic offender. Retrieval of data from manually maintained driver record files cannot be speedily accomplished by the adjudicator to identify the chronically bad, medically impaired, alcoholic or drug-abusing drivers.

Courts processing traffic cases generally operate independently and with minimum communication and coordination with the Governor's Highway Safety Representative, traffic law enforcement, driver licensing, driver education or driver improvement programs and medical rehabilitation agencies.

REPORT RECOMMENDATIONS AND ELEMENTS

1. Expand the traffic adjudication component of the traffic law system to embrace both the goals of adjudication and promotion of highway safety, giving equal weight to both purposes.

This will require the planning of a totally new traffic adjudication subsystem to the traffic law system, which integrates and combines the need of both adjudication and improvement of driver behavior.

This can be accomplished within the proposed National Highway Traffic Safety Administration's Standard N-7 on traffic offense adjudication. Development and promulgation of this proposed standard is specifically commended and endorsed by this Ad Hoc Task Force.*

---

* See NHTSA proposed revised Traffic Courts and Adjudication Systems Standard, Appendix B.

The adjudication subsystem possible under such a standard will permit maximum State innovation and experimentation within the diversity of the Federal system by utilizing the strengths of the Federal-State partnership.

2. Reclassify all but the most serious traffic offenses from the categories of criminal felonies and misdemeanors to a newly created third level of offenses to be known as "Traffic Infractions."

All traffic violations shall be classified as "Traffic Infractions," except for offenses which involve serious injuries or fatalities, leaving the scene of an accident, driving on a suspended or revoked license, alcohol or drug, or reckless driving, which remain as criminal offenses.

This new category of "Traffic Infractions" shall not require the revision of police or traffic law enforcement methods. It will allow a variety of improved traffic adjudication procedures to be used without application of burdensome and inappropriate criminal procedure requirements. The imposition of jail sanctions shall be eliminated under this category.

Traffic offense adjudicators shall have available a broader range of penalty and treatment sanctions. In first offense "Traffic Infraction" cases a fine would be imposed. On additional convictions more severe fines would be assessed. When the offender is classified as a potential or an actual problem driver, treatment shall be applied in addition to penalties and license restriction or withdrawal action.

3. Structure a governmental traffic offense adjudication subsystem either as part of an administrative agency separate from the judiciary, or within the judiciary, as each State may elect.

Require, in either alternative, adjudicative processes independent of both law enforcement and licensing agency functions.

Establish a new subsystem by legislative enactment or appropriate court rule and require legislative committee or judicial council review of its operation every six years.

Fund the combined adjudicative-rehabilitation and system support efforts with an adequate level of State legislative appropriations apart from identified traffic generated revenue.

4. Adopt a more simplified, informal and administrative type of procedural machinery for "Traffic Infractions" adjudication and sanctioning.

Develop uniform sanctioning policies within each State, including uniform bail and fine schedules, to be used by traffic adjudicators.

All "Traffic Infraction" cases shall be disposed of within 30 days of date of citation.

Permit first offender self-adjudication and sanctioning by mail or violations bureau unless the offense is classified as a mandatory appearance case.

Provide every cited motorist with the right to an immediate hearing on "not guilty" or "guilty with an explanation" pleas.

Defense attorneys shall not be required, but would be permitted. There shall be no entitlement to court appointment of counsel in case of indigency.

Right of jury trial shall not be afforded.

Rules of civil, rather than criminal, procedure shall be preferred. The burden of proof shall be by preponderance or a predominance of, or clear and convincing evidence, rather than by the criminal standard of proof beyond a reasonable doubt.

Provide every convicted motorist with an immediate, inexpensive right of judicial appeal.

5. Develop a Statewide traffic case adjudication, coordination and management subsystem which utilizes advanced record keeping, storage, retrieval and dissemination techniques.

Appoint a traffic adjudication subsystem administrative manager within each State. The manager shall develop and supervise a uniform system and train traffic case adjudicators and administrators. He shall annually collect and evaluate adjudication data and recommend improvements to the appropriate judicial and legislative authorities.

Traffic adjudicators shall be lawyers specially trained in traffic adjudication and highway safety. Continuing re-education programs shall be instituted and required.

Verbatim records shall be maintained in all trials of offenses which could result in license suspension.

The licensing authority shall issue a notice of intent to suspend the license of any person cited for a traffic offense who fails to answer a summons.

An ultimate electronic driver record data processing system (EDPS)--with direct input and retrieval terminals at law enforcement, license authority and adjudication facilities--shall be designed. A principal component of such a system shall be the use of a uniform traffic citation within each State.

6. Improve highway safety implementation by traffic adjudication identification of problem drivers, assignment to appropriate driver improvement screening programs and monitoring of the assignment results.

Mandatory violator adjudication appearance shall be required in all criminal cases and "Traffic Infractions" arising out of accidents, no operator's license, speeding in excess of 15 miles per hour above the posted limit and violations the conviction for which might result in licensing agency descretionary action.

In mandatory appearance cases, traffic adjudicators shall be provided with complete offender driving records and all pertinent background information to assist in sanction selection.

Traffic adjudicators shall be given a list of available and qualified driver improvement and medical rehabilitation agencies and programs.

With the possible exception of youthful offenders, the majority of first offenders shall continue to be disposed of by fines. Once a driving behavior problem is identified, adjudication emphasis shall shift from punishment to treatment.

To reduce recidivism, selective and priority attention shall be given to the problem driver.

CONCLUSION

The Task Force believes that adoption by the States of the Report Recommendations and their elements would result in a more ideal traffic law system which will advance highway safety through traffic offense adjudication. Implementation of the recommended traffic adjudication subsystem would offer a higher probability of contributing to the reduction of traffic accidents and fatalities than the traditional court adjudication process presently in operation. However, to achieve this ambitious highway safety goal through a more cost effective adjudication subsystem may require a higher level of public funding.

The recommended traffic offense adjudication subsystem is conceived to protect the constitutional rights of the driving public, improve driver behavior and enhance society's interest in highway safety. Concurrent by-products would be to unclog the lower court dockets, enable judges to devote their valuable time to serious traffic and criminal cases and to enhance the promotion of traffic adjudication justice.

APPENDIX B

FEDERAL STANDARDS ON
TRAFFIC OFFENSE ADJUDICATION

1. National Advisory Commission on Criminal Justice and Goals: Courts

2. Highway Safety Program Standard No. N-7 — Traffic Courts and Adjudication Systems

National Advisory Commission on Criminal Justice and Goals:

Courts, Standard 8.2

ADMINISTRATIVE DISPOSITION OF CERTAIN MATTERS NOW TREATED AS CRIMINAL OFFENSES

All traffic violation cases should be made infractions subject to administrative disposition, except certain serious offenses such as driving while intoxicated, reckless driving, driving while a license is suspended or revoked, homicide by motor vehicle, and eluding police officers in a motor vehicle. Penalties for such infractions should be limited to fines; outright suspension or revocation of driver's license; and compulsory attendance at educational and training programs, under penalty of suspension or revocation of driver's license.

Procedures for disposition of such cases should include the following:

1. Violators should be permitted to enter pleas by mail, except where the violator is a repeat violator or where the infraction allegedly has resulted in a traffic accident.

2. No jury trial should be available.

3. A hearing, if desired by the alleged infractor, should be held before a law-trained referee. The alleged infractor should be entitled to be present, to be represented by counsel, and to present evidence and arguments in his own behalf. The government should be required to prove the commission of the infraction by clear and convincing evidence. Rules of evidence should not be applied strictly.

   Appeal should be permitted to an appellate division of the administrative agency. The determination of the administrative agency should be subject to judicial review only for abuse of discretion.

   Consideration should be given, in light of experience with traffic matters, to similar treatment of certain nontraffic matters such as public drunkenness.

Federal Register, Vol. 37, No. 150
Thursday, August 3, 1972

Part 247 - HIGHWAY SAFETY PROGRAM STANDARD NO. N-7— TRAFFIC COURTS AND ADJUDICATION SYSTEMS

Section

Authority: The provisions of this Part 247 issued under Section 402 of the Highway Safety Act of 1966, 23 U.S.C. 402, and the delegations of authority at 49 CFR 1.51 and 501.8.

§ 247.1 Scope.

This standard establishes performance requirements for traffic courts and adjudication systems in a State highway safety program. It covers the adjudication activities of the State agency for highway safety, the driver licensing authority, and the State judiciary.

§ 247.2 Purpose.

This standard is designed to develop balanced local and statewide traffic court and adjudication systems which will promote highway safety through fair, efficient and effective adjudication of traffic law violations; and to reduce recidivism rates through the use of appropriate punishment, training and rehabilitation measures.

§ 247.3 Definitions.

"Adjudication agency" means a tribunal, other than a court, authorized to make judgments and apply appropriate sanctions and rehabilitative measures in traffic offense cases.

"Hazardous traffic law violation" means a traffic offense that--

(a) Contributes to a crash; or

(b) Is punishable as a felony; or

(c) Contains at least one of the following factual elements:

(1) Operation of a motor vehicle while under the influence of alcohol or another drug;

(2) Reckless driving;

(3) Leaving the scene of a crash; or

(4) Driving while driver's license is suspended or revoked.

"Traffic court" means a judicial tribunal with the authority to adjudicate traffic cases.

§ 247.4 Requirements.

Each State, in cooperation with the political subdivisions, shall establish a system for the adjudication of violations of highway traffic laws that meets the following requirements:

(a) The traffic offense adjudication activities of the State agency for highway safety, the driver licensing authority and the State judiciary shall be coordinated with the primary coordination responsibilities residing in one of these three agencies.

(b) The traffic case management system shall include:

(1) Use of a statewide uniform traffic citation.

(2) Retrieval of driver records from the traffic records system established in Standard No. N-1 in cases involving all traffic law violations.

(3) Preparation of a presentence investigation report in cases involving hazardous traffic law violations, which shall include an inquiry into driving habits, previous driving history, and social psychological, medical and economic background to assist an adjudicator in determining the appropriate sanction for a convicted offender.

(4) A record reporting system for entering case disposition reports into the traffic records system within 10 days after conviction or forfeiture of bail in a traffic violation case:

(5) Use of adjudication agencies, or other noncriminal procedures, for processing traffic cases such as parking and equipment violation, where warranted by caseload or rehabilitation and re-training considerations.

(c) Adjudication and administrative personnel, including referees and hearing officers, employed in the traffic court and adjudication systems shall be properly qualified and trained. There shall be a full-time judge or quasi-judicial hearing officer empowered to make dispositions in all traffic courts and adjudication agencies for each mandatory appearance caseload of 22,500 per year or a major fraction thereof.

(d) Uniform rules shall be established for--

(1) The impounding of suspended or revoked driver's licenses; and

(2) Staying the execution of punishment and license suspensions or revocations to permit a convicted

offender to participate in a driver rehabilitation program.

(e) Persons charged with hazardous traffic law violations shall be required to appear personally before a traffic court or adjudication agency. The deposit of a driver license certificate shall be permitted in lieu of bail or other security to insure an accused traffic offender's appearance before a traffic court or adjudication agency.

(f) Traffic courts and adjudication agencies shall be financially independent of any system of fees, fines, court costs, or other revenue (such as posting or forfeiture of bail or other collateral) resulting from processing violations of motor vehicle or traffic laws.

§ 247.5 Evaluation.

The traffic courts and adjudication systems program shall be evaluated by the agency having primary responsibility for coordinating the State's adjudication activities. The evaluation shall be submitted to the State agency for highway safety for use in developing the Annual Work Program and updating the Comprehensive Plan pursuant to Standard No. N-1.

(a) Statistical analyses shall be prepared for evaluation purposes, making maximum use of case disposition and caseload information reported to the State traffic record system, and emphasizing particularly the following types of data:

(1) Types and frequency of offenses;

(2) Case disposition, including the percentage of convictions, delays in court appearance, nolle prosequi pleas, reductions in charges and rehabilitation referrals; and

(3) Recidivism rates, especially as they relate to particular case dispositions.

(b) The evaluating agency shall review the program to determine the extent of compliance with the specific program requirements established in § 247.4.

TRAFFIC COURTS AND ADJUDICATION SYSTEMS

The proposed new Standard N-7 covering traffic courts and adjudicating systems is a revision of the current standard No. 7, Traffic Courts, issued on November 7, 1969. The current standard has one requirement--that all convictions for moving traffic violations be reported to the State traffic records system--and several recommendations. The proposal would delete the recommendations and expand and strengthen the requirements to encourage State development of a traffic offense adjudication system that will provide maximum highway safety

benefits by contributing to a reduction of traffic offense recidivism rates.

The proposed new standard covers the State judiciary, the State agency for highway safety, and the driver licensing authority, and would require coordination of the adjudication activities of three agencies, as well as the development of statewide uniformity in certain aspects of traffic offense adjudication.

The major new feature of the standard is the requirement for development and implementation of a system applying modern case management techniques to traffic offense adjudication. In this regard the current requirement that moving violations be reported is expanded to require that the driver record and a presentence investigation be available for use in sentencing convicted offenders. In addition, reports of case dispositions are required to be made within 10 days of conviction or forfeiture of bail or other collateral. NHTSA believes that the failure of many States to meet the current reporting requirement is due largely to inadequate case management capability. Only in large metropolitan areas have modern case management techniques, including EDP, been instituted. Modern case management techniques and rapid record reporting are necessary if the courts are to meet their case disposition reporting responsibilities. To develop this capability may require some court reorganization and careful coordination with the statewide traffic records system to be developed pursuant to another standard. Traffic courts and adjudication agencies will particularly have to make maximum use of EDP capability existing in enforcement and licensing agencies.

A further requirement related to case management is that noncriminal procedures be developed for processing minor traffic violations, such as parking or equipment offenses. In many urban areas, courts are overburdened with traffic cases, to the detriment of both the traffic safety program and other judicial functions. The proposed standard would require that States establish adjudication agencies (nonjudicial tribunals) or other noncriminal methods of dealing with traffic violations where caseload considerations justify use of these methods. The details of such systems are not specified in the standard, but are left to the discretion of the States at this time.

Under the proposed standard, the current recommendations relating to court personnel and administration would be changed to a more general requirement that there be qualified and trained personnel, with the additional specific requirements that there be at least one traffic offense adjudicator for each mandatory court appearance caseload of 22,500 per year, or a major fraction of that figure. Current recommendations relating to court independence from a fee system and mandatory court appearance for certain offenders would also be retained as requirements with the additional requirement that there be a provision permitting surrender by a defendant of his driver license certificate in lieu of bail or other collateral. The purpose of this requirement is to facilitate the fair and humane treatment of accused traffic court violators without imposing bail or requiring confinement in jail, and to encourage personal appearance by defendants.

Careful evaluation is a key to determining program effectivenesss and essential for planning future program activities. For this reason, the proposed new standard would add a requirement for evaluation of the traffic courts and adjudication systems program by the unit of State government having the primary responsibility for coordinating adjudication activities. A principal measure of program effectiveness to be required in the evaluation of the program is the number of repeat traffic offense violators to be determined by the recidivism rates. These rates would be developed from statistical analyses of data reported to the State traffic records system.

APPENDIX C

Memo on Proposed Revision in the Manner of Classifying and Handling Certain Minor Traffic Violations in California

Edwin S. Moore - May, 1967

MEMO ON PROPOSED REVISION IN THE MANNER OF CLASSIFYING AND HANDLING CERTAIN MINOR TRAFFIC VIOLATIONS IN CALIFORNIA

The day of the traffic arrest for "revenue" has by and large, given way to an attempt to administer the traffic laws in such a manner as to carry out their purpose and to assist in providing for the safe and orderly movement of traffic upon the public streets and highways.

Despite the reforms, which to a substantial extent have eliminated the practice of making traffic arrests for revenue purposes, the present method of handling traffic violation cases seems far from satisfactory.

The American Bar Association took the leadership some 25 years ago in urging major reforms in the nation's traffic court setup and in the manner in which traffic violation cases should be handled. It is interesting to note that at that time, George Warren, in his report on "Traffic Courts" which formed the basis for the action of the ABA's Standing Committee on Traffic Court Reform, urged the elimination of the right of jury trials in traffic arrest cases. The argument advanced at that time in support of this denial of a motorist's right to a jury trial was based on the fact that too many drivers were escaping punishment by being permitted to have their cases tried by juries.[1]

More recently, the California Judicial Council has undertaken to sponsor legislation on this subject. The following is a direct quotation from the report of the California Judicial Council:

> "The Judicial Council recommends the enactment of legislation reclassifying minor traffic violations as noncriminal traffic infractions, punishable by a money penalty, license suspension, attendance at a school for traffic violators or any combination thereof. There would be no right to a jury trial or to the appointment of counsel in such cases.

---

[1] "Enforcement officials are perturbed to think that punishment for these serious offenses can so often be circumvented in this manner." (by jury trials) See Pages 76-77. Traffic Courts. George Warren.

"California law now classifies all traffic violations, including violations of statutes and ordinances relating to parking, as crimes or public offenses subject to fine and imprisonment. Under this system almost every motorist in the state at one time or another is technically classified as a criminal and subject to a possible sanction of imprisonment, however trivial the offense. All the time-consuming procedures provided for trial of serious offenses including the right of a trial by jury and to have appointed counsel are applicable to these minor violations although it would appear to be in the public interest to have these cases disposed of more expeditiously and without including deprivation of liberty as one of the penalties.

"The classification of a traffic violation as something less than a misdemeanor is not unique and the elimination of jury trials and the right to appointed counsel in such cases raises no substantial constitutional issues and has precedent in other jurisdictions. The effective enforcement of traffic laws does not require that violations be classified and treated as crimes, and the proposed reclassification is not intended to minimize the importance of enforcing such laws. Rather, the proposal is aimed ultimately at developing effective procedures and penalties that are uniquely adapted to the lesser traffic cases and give recognition to the fact that minor traffic violations are not viewed by the public as crimes."

The proponents of the California Judicial Council proposal base their case in behalf of this proposal on two points. They are:

1) That the continuing increases in the number of jury trials requested by those arrested for minor traffic violations threatens to inundate the courts. The subsequent delays, costs and difficulties arising therefrom must inevitably result in a breakdown in the administration of California's traffic laws; and

2) The increase in the demands for use of the Public Defender's Office or appointment of Counsel by the courts in behalf of motorists charged with minor traffic violations threatens to impose an undue financial burden on the public.

The California Judicial Council Cites statistics to support these contentions.

The battle against court congestion, judicial delay and denial of justice has been going on for years. Dana Bullen, in a report published in early 1967 pointed out that "court officials have been hacking away at judicial delay and congestion for years, getting nowhere." In 1958, Chief Justice Earl Warren said bluntly that, "Interminable and unjustifiable delays in our courts are compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundations of constitutional government in the United States."

The Federal Court System is a good example of what has happened and is happening to our judicial processes. The number of Federal judges has increased from 197 in 1941 to 341 in 1966. Yet, President Johnson two months ago reported to Congress that "congestion and delay has never been worse."

Senator Joseph T. Tydings of Maryland, Chairman of the Senate Subcommittee on Improving Federal Judicial Machinery, recently cited a number of situations which, as he pointed out, called for prompt and effective corrective action. Included in these situations were Cook County, Illinois where civil actions are now subject to a 5-year delay, and Texas, where the backlog of pending cases has climbed to 212,000--and no one can say how long it will be before these cases will be disposed of.

The above information is cited merely to show that court delay and court congestion are not peculiar to traffic courts, but appear to be a general condition affecting both Federal and State Courts throughout the nation.

Mr. Bullen, in his review of this problem, made the point that consideration was being given to the need to take certain minor types of cases out of the courts entirely in order to permit the courts to continue to function effectively and efficiently on important matters which require judicial disposition.

The idea of reclassifying minor traffic offenses as "infractions," thus taking them out of the category of crimes, is advanced by its proponents for the primary purpose of relieving the growing congestion of traffic courts by making it impossible for those accused of "traffic infractions" to use the "demand for a jury trial" as a delaying and bargaining tactic.

The idea of changing traffic offenses from crimes to infractions is not new. This was done in the State of New York in 1934, and the right of a jury trial in such cases was withdrawn by the New York Legislature in 1939. It would seem most desirable to see what has happened in New York under its "traffic infraction" law and how well it has been accepted by the courts, the enforcement authorities and the public.

This subject has been and is being given wide public consideration through a series of hearings held by the Joint Legislative Committee on Court Reorganization headed by The Honorable Henry L. Ughetta, Associate Justice of the Appellate Division, Second Judicial Department.

Dean Jerome Prince of the Brooklyn Law School, one of the most respected and distinguished leaders of the New York Bar is serving as Counsel of the Committee. The Committee's responsibilities involved four areas of court reform. The one most pertinent to the subject at hand is described in the following language:

> "Initiation of a study of the possibility of reclassifying traffic violations constituting offenses and misdemeanors and removing those traffic offenses of less than misdemeanor grade from the criminal courts, and having such offenses adjudicated by an administrative agency."

The Committee's report follows:

JURISDICTION OVER TRAFFIC INFRACTIONS

Section 155 of the Vehicle and Traffic Law (New York) defines a traffic infraction as a "violation of any provision of this chapter or of any law, ordinance, order, rule or regulation regulating traffic which is not declared by this chapter or other law of this state to be a misdemeanor or a felony." A traffic infraction is not a crime. (Penal Law 2: Vehicle and Traffic Law, 155) Nevertheless, it is the criminal court which has been vested with jurisdiction over traffic infractions, and the procedure used in the prosecution of a traffic infraction is, for the most part, the procedure used in the prosecution of a misdemeanor. (Squadrito v. Griebsch, 1 NY 2d 471, 477; Vehicle and Traffic Law, 155; cf. People v. Letterio, 16 NY 2d 307)

Widespread dissatisfaction with the present method of dealing with traffic infractions has led the Committee to undertake a study of the desirability of withdrawing from the criminal courts jurisdiction over traffic offenses which

are not crimes and of vesting jurisdiction over such offenses in an administrative agency. As part of this study, a public hearing on the question was held by the Committee on February 10, 1966 in Room 319a of the Brooklyn Supreme Court Building, to which all interested persons were invited by the Chairman to attend and to express their views.

Attached to the announcement of the public hearing, which was sent to all prospective witnesses, were two papers prepared by the Committee: one paper stating the purpose of the hearing, the other setting forth a "working hypothesis"--that is, a brief statement of how an administrative agency given exclusive jurisdiction over traffic infractions might operate. The "working hypothesis" was intended merely to stimulate and to guide the discussion at the public hearing, and the prospective witness was so informed; it was not, and is not, to be regarded as a final plan. This "working hypothesis" reads as follows:

INTRODUCTION: A person who commits a traffic offense of less than misdemeanor grade is not a criminal and should not be treated, even procedurally, as if he were a criminal. Jurisdiction, therefore, over such offenses should not be vested in a criminal court, but in an administrative agency empowered to enforce its findings by suspending or revoking the offender's license or by subjecting him to a financial penalty. The administrative agency would also have the power to require the offender, in appropriate instances, to undergo physical or psychological testing and, when deemed desirable, to require him to enroll in a scientifically devised driver educational program. In brief, the administrative agency would have a two-fold function: (1) it would enforce the traffic laws, and its power to suspend or revoke licenses would prove to be a most effective deterrent; and (2) it would protect public safety by singling out the unsafe driver and re-educating him or, if re-education is not possible, by depriving him of his license to operate a motor vehicle.

Some of the other advantages inherent in the proposed plan may be mentioned briefly:

(a) It would relieve the criminal courts of the task of dealing with traffic offenses which are not crimes.

(b) It would better suit the public convenience, in that the motorist charged with the traffic offense would be permitted to plead either guilty or not guilty by mail; and hearings, when necessary, could be scheduled at times and places convenient to the parties.

PROCEDURE: (Only a very general outline of the procedure to be followed by the administrative agency is given here. As earlier indicated, this outline is intended only to stimulate discussion; it is not intended as a final plan--hence the conspicuous lack of detail.)

The offender will be given a summons which will require him to plead by mail within a specified period.

If the offender pleads guilty, and that plea is accepted by the administrative agency, the offender will then be notified of the amount of the penalty he is required to pay. If the offender fails to make payment within a specified period of time, his license will automatically be suspended.

If the offender pleads not guilty, he will be notified of the time and place for the hearing. The hearing will be conducted by a referee. The exclusionary rules of evidence will not apply to the hearing. Privileged communications (between attorney and client, husband and wife, etc.) will, however, apply. The state will be required to prove that the offender committed the act charged, and will be required to do so by a fair preponderance of the evidence.

If, after the hearing, an adjudication is made that the offender did commit the act charged, and the referee imposes the appropriate penalty, the offender may appeal to the County Court, or, in New York City, to an appellate term of the New York City Criminal Court.

Testifying at the hearing generally in support of a plan to vest exclusive jurisdiction in an administrative agency over traffic infractions were Honorable John Murtagh, Administrative Judge of the New York City Criminal Court, Dean Daniel Gutman of New York Law School; Lewis B. Scott, Esq., Director of Research of the Automobile Club of New York; Honorable Elliott Golden, Chief Assistant to the District Attorney, Kings County, representing the New York State District Attorneys Association; Sanford Green, Esq., representing the National Salesmens' Association; and Sergeant Finnegan of

the Police Department of the City of New York. Testifying in opposition to such a plan were Honorable Sherwood Maggin, President of the New York State Association of Magistrates; Honorable John F. Hylan, Justice of the Peace, Pelham, New York, representing the Westchester County Magistrates Association; Honorable Raymond Cothran, representing the New York State Conference of Mayors; M. Marvin Berger, Esq., Assoc. Pub. of New York Law Journal; and Abraham Cohen, Esq., representing the New York State Association of Trial Lawyers.

Another public hearing, this time in upstate New York, will be held in the near future. In the interim, the Committee's staff is completing its study of the legal questions involved in withdrawing jurisdiction over traffic infractions from the criminal court and vesting such jurisdiction in an administrative agency. The Committee anticipates that its study will be completed in time for a recommendation to be made to the Legislature in 1967.

CONCLUSION

It is recommended that if the Joint Legislative Committee on Court Reorganization be continued after March 31, 1966, the Committee should undertake:

(a) To prepare and to publish a comprehensive study of the feasibility and desirability of vesting in an administrative agency exclusive jurisdiction over traffic offenses which are not crimes.

This study should include:

(1) A list and analysis of all traffic offenses contained in the Vehicle and Traffic Law, with the objective of determining whether certain offenses which are now misdemeanors should be reclassified as traffic infractions and whether certain offenses now traffic infractions should be reclassified as misdemeanors.

(2) A study of the procedural and evidentiary problems involved in agency adjudication of traffic infractions.

(3) A study of the constitutionality of limiting administrative adjudication to a portion of the State; e.g., to the major cities.

(b) To continue its study of the unitary judicial budget for the purpose of determining the desirability of including in the unitary budget all court auxiliary services and related agencies.

(c) To make a final report and recommendation with respect to the proposal to expand the Family Court's jurisdiction over young offenders.

(d) To make an evaluation of, and to render to the Legislature a report on, the effectiveness of the day-to-day operation of the unified court system.

* * * *

It is quite apparent from a review of the work of the Joint Legislative Committee of the State of New York that the traffic infractions program adopted by that state more than 30 years ago has failed to accomplish its intended purpose. Even worse, the program has aroused the ire of law enforcement authorities, the judges of the traffic courts in the metropolitan areas, and last, but by no means least, the public at large.

As was pointed out time and again in statements made to the Legislative Interim Committee in New York, the mere changing of the character of a traffic offense from a "crime" to a "traffic infraction" and then to continue to treat such offenses as crimes when defendants appear in court, accomplishes little more than to erode away some of the basic rights of motorists without any compensating benefits to the persons accused of such infractions.

In an effort to correct this weakness, Dean Prince, in his "working hypothesis" has suggested that minor traffic law violations which are defined as "traffic infractions" be heard by hearing officers in an administrative capacity rather than by the courts.

Dean Prince's suggestion appears to have considerable merit, and such a program could be readily adapted to an existing state administrative agency set up in California.

Some years ago, the California Legislature established a "Driver Improvement Program" and vested authority in the State Department of Motor Vehicles to administer that program. The Driver Improvement Program is designed to encourage, by education and otherwise, safe and sound

driving practices on the part of those drivers who encounter difficulties in complying with the traffic laws or seem unable to drive safely. In addition, the program helps weed out those drivers who are so utterly irresponsible or anti-social that they should not be permitted to drive.

These objectives are also the primary purposes of our traffic laws. The effectiveness of the present California Driver Improvement Program is somewhat hampered by the fact that its work often follows in the wake of a court disposition of a traffic law violation. This results in the contention of many defendants that they are being punished twice for the same offense. And although there may well be no valid legal basis for such a contention, the average driver little understands or cares about such fine legal distinctions.

In considering the issue at hand, it must be constantly borne in mind that the vast majority of traffic offenses do not involve "criminal conduct." Many do not even involve the issue of safety, either by their very nature or by the conditions existing at the time and place of the alleged offense.

The establishment of traffic arrest "quotas" (through the application of the so-called enforcement index), arrests for revenue purposes, and the wide discretionary authority which traffic officers must necessarily employ in their work, all combine to ensnare many unwary drivers who might or might not have a valid defense to the offense charged or the offense might or might not involve hazard or danger.

The continuing toll of traffic accidents is an effective, though grim, reminder that our present traffic arrest and traffic court procedure have had little effect upon the traffic accident problem. There is hope that a new approach to this problem might prove effective.

Witnesses before the Legislative Interim Committee in New York have contended that the system of trying traffic infractions in the criminal courts "is not fair to motorists, to the courts, or to the community." In support of this view, it has been pointed out that the average motorist who wishes to protest a traffic citation generally appears in court without counsel and without knowledge of court procedure. As Dean Prince and others have commented, he faces an experienced judge and a police officer who has been trained as a prosecution witness. Even if the judge is careful to explain the rules, the accused may not understand them.

He does not know how to crossexamine and may find the questions most pertinent in his mind are not permitted. He may have other evidence of his innocence, but is told that it is irrelevant and immaterial. He is often pronounced guilty without ever being allowed to tell his side of the story. All too often, the apparent summary disposition of his case leaves the defendant disillusioned and resentful. And rather than building respect for law and order or doing anything constructive about a person's driving habits and practices, the present procedure has all too often produced contrary results.

Conceivably, if the program now under consideration in New York were adopted in California, much of the criticism of our present method of dealing with minor traffic violations would disappear.

As has been pointed out, California already has its Driver Improvement Program in operation. It would be a relative simple matter to expand the authority of the State Department of Motor Vehicles to handle hearings on the proposed traffic infractions program. The Department presently has all of the arrest and accident records of California drivers. It is presently engaged in interviewing drivers and in enforcing its Driver Improvement Program. Appropriate legislation could be enacted to add to its responsibilities the handling of traffic infraction cases.

There are many advantages of such a plan quite aside from accomplishing the purposes which the California Judicial Council is seeking in relieving court delay, congestion and excessive expense for jury trials and publicly appointed defense counsel. They include:

(1) Instead of a formal trial with formalized, cumbersome rules, informal hearings could be held with simplified rules of procedure, particularly adapted to the type of offense committed. Such rules could and should be drawn to give the motorist every opportunity to present his defense without fear or intimidation.

(2) The area of inquiry could be broadened to determine why the offense was committed and if extenuating circumstances exist.

(3) Once it is known why a violation was committed and the circumstances surrounding it, appropriate corrective action could then be initiated by the hearing officer of the Department of Motor Vehicles. After deciding the case before him on its merits, the hearing officer would then be able to turn to the individual's accident and arrest record to determine if the driver needs further education, rehabilitation, or even if he appears to be unfit to drive.

(4) This procedure would eliminate the treatment of motorists charged with traffic infractions as criminals.

(5) The hearing officers of the Department of Motor Vehicles handling infractions cases should be lawyers. This for the reason that although these hearings will be informal, the hearing officer must be able to distinguish the values to be assigned to the various types of evidence which will be submitted.

(6) The authority of such hearing officers to impose fines or suspend the drivers licenses of those charged with traffic infractions could be limited to a schedule prescribed by the Legislature.

(7) Appeals from the orders of the hearing officers could follow the procedure presently in effect under the "negligent driver" section of the California Vehicle Code.

Everyone who is familiar with the traffic accident problem recognizes the need for more effective means of "reaching" and "educating" drivers to follow safe and sound driving practices than exist at the present time.

The proposed procedure for reclassifying minor traffic offenses as traffic infractions and of having such matters handled by an administrative agency--the Department of Motor Vehicles--holds considerable promise of accomplishing the ends desired by the California Judicial Council, and, in addition, to promote effectively the safe use of public streets and highways.

Prepared by

EDWIN S. MOORE
Consultant
California State Automobile Association
150 Van Ness Avenue
San Francisco, California 94101

APPENDIX D

LEGAL ANALYSIS

1. Analysis of California Constitutional Issues.

2. Summary Analysis of Federal Constitutional Issues

LEGAL ANALYSIS OF THE CALIFORNIA MODEL FOR THE ADMINISTRATIVE ADJUDICATION OF MINOR TRAFFIC OFFENSES

PREPARED BY
THE INSTITUTE FOR
ADMINISTRATIVE JUSTICE
McGEORGE SCHOOL OF LAW
UNIVERSITY OF THE PACIFIC

Gordon D. Schaber
Dean, McGeorge School of Law

Glenn A. Fait
Director, Institute for
Administrative Justice

Jay R. Simmons
Assistant to the Director,
Institute for Administrative
Justice

TABLE OF CONTENTS

INTRODUCTION

Senate Concurrent Resolution Number 40 (filed with the Secretary of State, August 25, 1975), resolved that the Department of Motor Vehicles would lead in the conduct of a study examining the feasibility of implementing administrative adjudication of certain traffic offenses in California. It became apparent from the outset that there were involved certain legal considerations, that must be answered in making a conclusion as to the feasibility of such a procedure, possibly the most concern being whether the adjudication of traffic violations by administrative proceeding would be violative of the California constitutional provision providing for the separation of powers.

To this end, the Department of Motor Vehicles commissioned the Institute for Administrative Justice at McGeorge School of Law, Univeristy of the Pacific, to prepare a report analyzing the constitutionality, considering the California Constitution, of the California Model of Administrative Adjudication of Traffic Infractions.

Contained herein are the results of this legal study. The purpose of this report then, is not to set forth all possible legal issues dealing with administrative adjudication in general, but rather to analyze the constitutionality of the model considering the California Constitution, specific legal issues raised by the provisions of the model, and some of the current statutes which would be in conflict with or in accord with the proposed process. It should also be noted that the model itself has been in the process of refinement during the preparation of this study, therefore, of necessity, this report does not deal in specificity as to all the refinements so developed.

This report follows, as nearly as possible, the chronological course that a motorist would take through the California administrative adjudication process. The major steps being: (1) Notice issuance, (2) Decision making, (3) Sanction, and (4) the Review process. To provide one with a proper perspective of the legal issues discussed herein, this report initially presents what appear to be the most critical legal issues when considering the constitutionality of the transfer of traffic adjudication from the judiciary to the Department of Motor Vehicles, an agency of the

executive branch of government. These issues are as follows: (1) the criminal or civil nature of the traffic offense, (2) the nature of the sanctions that may be applied, (3) the measure of judicial review afforded by the courts, and (4) the due process protections afforded in the administrative adjudication model.

A summary report has also been prepared which presents the findings and conclusions of the comprehensive report. In examining the summary, one should refer to the comprehensive report for a more in-depth analysis of the issues discussed.

I. SEPARATION OF POWERS

California's separation of powers doctrine is embodied in two provisions of the California Constitution. Article III, Section 3 states:

> The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.

Article VI, Section 1 states:

> The judicial power of this state is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All except justice courts are courts of record.

The proposed transfer of traffic offense adjudications from the judicial branch to the Department of Motor Vehicles, an arm of the executive, clearly raises certain constitutional problems relative to these provisions. The critical focus of any examination into possible trespass of the executive into judicial territory will center on (1) whether the offense subject to agency adjudication is denominated civil or criminal, (2) the nature of the sanctions imposed by the agency, and (3) the extent of judicial review afforded the agency decision by the courts. The second and third of these considerations are dealt with at length in separate and later sections of this paper.[1]

California statutes presently classify traffic laws as infractions, the least serious of criminal offenses.[2] The defendant charged with violation of a traffic offense is therefore entitled to almost the entire panopoly of protections attaching to criminal prosecutions. He is entitled to trial before a court of law.[3] The case against him must be proved beyond a reasonable doubt.[4] The strict rules of evidence apply, including the exclusionary rule which removes from the court's consideration any evidence obtained by means of unreasonable search and seizure.[5] Further, he may invoke his Fifth Amendment right to remain silent in criminal actions.[6] Although not entitled to jury trial or appointed counsel, as in more serious offenses, he may nevertheless be represented by privately retained counsel.[7] The classification of the traffic offense as criminal raises certain anomalies, however.

The most apparent of these anomalies is raised by Penal Code Section 182 which contains the penalties for conspiracy to commit crimes. Incarceration and fines ranging to $5000 may be meted out in these instances,[8] raising the possibility that conviction of conspiracy to violate a traffic law could bring a more serious punishment than actual commission of the offense.

Further, the criminal classification of traffic violations may be at odds with the generally accepted view of the public at large that traffic offenses do not constitute "real" crimes. It is on this latter consideration, the determination of whether traffic offenses are in fact criminal in nature, that the constitutional propriety of a shift to administrative adjudication may turn.

Almost certainly, the transfer of criminal prosecutions to an administrative format would succumb to constitutional attack. Where the question has been litigated, the courts have uniformly held that criminal actions lie within the executive province of the courts and that the separation of powers doctrine will not allow for agency incursion into this realm.[9] That an agency may not try traffic offenses currently denoted as "criminal", however, does not preclude the possibility that some traffic offenses may be decriminalized. Decriminalization will involve as a first step the statutory reclassification of the offense as civil rather than criminal in nature.[10] Civil offenses, as noted within, may be made subject to adminstrative adjudication.

Mere statutory reclassification may not be sufficient to convince the courts, however, that the judicial prerogative should be surrendered to an agency. In determining whether criminal due process rights attach, for example, the courts have on occasion been unimpressed by the statutory classification holding that where the offense was civil but the penalty incarceration, the indigent criminal defendant's right to appointed counsel at trial attached.[11] This focus on the quality of the sanctions is discussed within, and it appears that the California courts would allow an administrative agency to exercise limited discretion to sustain or dismiss the accusation for the purpose of revoking licenses or imposing civil monetary sanctions.[12]

Closely related is the situation in which some stigma attaches to an adjudication of guilt. In ruling that an

indigent defendant convicted of a misdemeanor was entitled to a free transcript on appeal, notwithstanding the fact that the offense was one for which a fine but no confinement would lie, the United States Supreme Court concerned itself with the irrepairable damage to the reputation and future professional status of the defendant which would flow from conviction of any crime, major or minor.[13] Analogously, a court reviewing a scheme for administrative adjudication of traffic offenses might tend to require that an alleged violator be afforded a right to have his case adjudication in a court of law if it were shown that conviction of a traffic violation were regarded as publicly shameful and likely to adversely affect a party's prospect for employment or other life opportunities. Precisely the converse seems to be true of traffic convictions, however. They appear to be regarded neither as shameful nor as sufficiently serious to mark the convicted defendant as a public offender.

Still another approach of the courts, in determining whether traffic offenses are truly criminal or civil for separation of powers purposes, is to scrutinize the purpose for which sanctions are imposed against violators. The distinction between criminal and civil proceedings is delineated in two California statutes. Section 683 of the Penal Code states:

> The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

Section 30 of the California Code of Civil Procedure provides:

> A civil action is prosecuted by one party against another for the declaration, enforcement or protection of a right, or the redress or prevention of a wrong.

In broad brush, the difference appears to turn on primary objectives: punishment in the case of criminal sanctions; deterrence and rederess in the imposition of civil sanctions. That the two objectives overlap is apparent. The threat of punishment will also act as a deterrent, while a sanction aimed at deterring an offender from future anti-social conduct may, from his standpoint, appear to involve punishment for past conduct. Nevertheless, in upholding the authority of agencies to suspend or revoke professional licenses for cause, the courts of California have spurned

attempts to characterize the proceedings as punitive in nature. A California appellate decision reviewing the revocation of an insurance license by the state Insurance Commissioner put the matter succinctly:

> The function of an administrative proceeding . . . is neither criminal nor quasi-criminal in character. It has been held that the purpose is not the punishment of the licensee, but rather the protection of the public.[14]

Thus to qualify as civil, the sanctions imposed for traffic violations under an administrative adjudication format must be shown to be deterrents fashioned primarily for the protection of the public and not punishment for the individual violator. An examination of the historical roots of traffic control legislation seems to indicate that that body of law did in fact evolve with primary emphasis on protecting the public good.

Many early traffic regulations had for their main purpose not merely the regulation, but the total elmination, of the automobile, an unwelcome phenomenon which had recently sprung on to the streets and highways, frightening horses, running down the "less agile pedestrians", and disturbing the peace and quiet of town and countryside. Rudimentary control measures of that period reflected widespread animosity against drivers of what some called "the devil wagon". One such statute was an early Pennsylvania law which required a motorist encountering a team of horses to pull off the road and cover his vehicle so that it would blend with the surrounding landscape. If the horses were still frightened, the motorist had to take his vehicle apart piece by piece and hide the pieces under the nearest bush.[15] There is also an account of a sheriff who posted the sign that read: "The speed limit is a secret this year. Motorists breaking it will be fined $10."[16] This attitude gave way in time to the recognition that:

> '[A]ll persons have an equal right to use . . . [highways] . . . for the purposes of travel by proper means, and with due regard for the corresponding rights of others.' [citations] Notwithstanding such general principles characterizing the primary right of the individual, it is equally well established . . . that usage of the highways is subject to reasonable regulation for the public good.[17]

It is from this matrix then, centered on protection of the public and not from a necessary desire to punish the violator, that traffic and motor vehicle statutes arose. Further, it is worth noting that at the historical moment in which cognizance over traffic violations was conferred on the courts, no developed body of administrative law existed under which such functions might have been exercised by an agency.

The traffic offense, therefore, appears susceptible to legislative classification as "civil".[18] While this reclassification may create some problems in light of current statutes relative to the arrest and detainment powers of peace officers, these difficulties are probably soluble by statute and pose no constitutional obstacle.[19] Once denominated as civil, the enforcement of traffic offenses in an agency hearing rather than in the courts probably would comport with the requirements of the separation of powers doctrine so long as the sanctions imposed do not include incarceration and so long as adequate provision is made for judicial review. Of course, the alleged violator must also be afforded his due process rights prior to and during the hearing, a subject to which this paper now turns.

II. DUE PROCESS CONSIDERATIONS

In considering the due process safeguards necessary in a certain adjudication, the controlling factor is not the mere legal characterization of the individuals interest, nor whether the governmental entity which impinges on that interest is judicial or administrative. The test, simply stated, is whether the adjudication seriously affects, or may result in adverse consequences to the individual. If so, he is entitled to procedural due process safeguards. This right does not depend on the forum of the adjudication, but rather the balancing of the interests involved. The safeguards required vary with the situation and are most demanding in criminal prosecutions. Although administrative due process has been less demanding certain parallels exist.[20]

The landmark case of Goldberg v. Kelly,[21] sets the modern day context in which the "rudimentary due process" requirements necessary in administrative proceedings are placed. In finding that an informal review with the welfare claimant's caseworker prior to termination of benefits was violative of "rudimentary due process" requirements, the court held that a full evidentary hearing was necessary prior to termination of the claimant's welfare benefits.[22] In reaching this conclusion, the court reasoned that the due process procedures required "under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action."[23]

The leading case of Bell v. Burson,[24] provides instruction in the nature of procedural due process protections necessary when the private interest in question is a license to operate a motor vehicle. The Bell case involved a Georgia vehicle statute which stated that a driver's license of an uninsured motorist involved in an auto accident would be suspended unless he posted security (either a bond or cash deposit) to cover the amount of damages claimed by the aggrieved parties in the accident reports. There was no hearing, allowed before this action, on the issue of the driver's fault or liability for the accident. In failing to provide for a hearing approaching this issue, before suspending or revoking his license, the court found that the DMV denied him due process of law in violation of the

Fourteenth Amendment. Once the driver's license is issued, the court stated, its continued possession may become essential in the pursuit of a livelihood. Suspension of the license thus adjudicates important interests of the licensee and can't be taken without a formal hearing. Relevant constitutional restraints, added the court, "limit state power to terminate an entitlement whether the entitlement is denominated a 'right' or a privilege'."[25] Thus the court intended to apply broadly the concept that an individual is constitutionally entitled to a hearing prior to being deprived of a significant interest, of which the driving privilege was so labeled.

One year after Bell, California dealt with the same hearing issue in Rios v. Cozens,[26] which involved basically the same type of financial responsibility facts and issues. The California Court, following the rationale of Bell, stated that before a license can be taken, the driver must be afforded a formal hearing on the issue for which the license was being revoked or suspended.[27]

In the area of administrative hearings, the courts have recognized certain elementary procedural protections which must be provided.[28]

Most important of these protections are: (1) Adequate and Timely Notice, (2) Speedy Hearing, (3) Impartial Decision Maker, (4) Opportunity to be Heard, (5) Disclosure of Evidence, (6) Confrontation and Cross-Examination, (7) Right to Representation, and (8) Written Decision.

More important than these specific protections is the admonishment that fundamental fairness is the touchstone of due process. This paper will now attempt to analyze the California Model of Administrative Adjudication of Traffic Infractions to determine whether it conforms to proper due process standards.

A. Pre-Hearing

1. Issuance of the Notice to Appear

The rights and duties of a peace officer to stop a motorist and issue him a notice to appear after he has been observed in violation of motor vehicle statute should be specifically provided for in any statutory scheme for administrative adjudication. Since the violation of statute will no longer be a crime, the powers of a peace officer in criminal matters would no longer be applicable.

Once the rights and responsibilities of the peace officer are fully expressed in the statutes, the issue of the officer's authority should be settled. It is possible, however, that an assertion will be made that the stopping of a motorist by an officer for the purpose of issuing a notice to appear constitutes an arrest.

Under the current criminal law framework of motor vehicle statutes, there is firm support for the assertion that the mere stopping of a vehicle to issue a traffic infraction notice to appear is not an arrest.[29] Once the legislature denominates motor vehicle infractions as civil rather than criminal, there is even less reason to believe that the stopping of a motorist would be considered an arrest.[30]

In New York, where for over forty years traffic offenses have been de-criminalized, the court was faced with the issue of whether a police officer could be liable for false arrest when he stopped a motorist to issue a traffic citation.[31] The court found that:

> The issuance of a 'traffic ticket' . . . is not an arrest; rather it is a notice to appear in a given court on a given day, at which time and place a specific charge will be made.[32]

The courts apparently viewed the peace officer's role in that case as similar to his role in the service of civil process.

There is presently statutory support for the proposition that a peace officer has authority to carry out his defined duties. California Penal Code Section 148 provides for a police officer's power in the case of an uncooperative motorist. If the motorist ". . . willfully resists, delays, or obstructs any public officer in the discharge or attempt to discharge any duty of his office, . . ." he is guilty of a criminal offense.[33] Once California statutes set out the duty of a police officer in the de-criminalization framework, any lack of cooperation would allow the police officer under Penal Code Section 148 to exercise all powers granted him under criminal statutes, including the power to arrest.

Therefore, provided the statutes delineating the powers of the peace officer to stop motorists and issue notices of violation, are properly drafted and not overly broad, any constitutional objections will be satisfied.

2. Notice

To comply with the requirements of due process, the state must give adequate and timely notice to the party charged with the violation. Notice is adequate when it (1) describes the conduct of the party charged; (2) sets forth the violation alleged; (3) delineates the possible sanctions which may attach, should the party be found guilty of the violation; and (4) apprises the party of his right to have a hearing on the matter.[34] The citation will describe both the conduct and the violation with which the party is charged.[35] Specific provision is made for the citation to inform the party both of his right to the hearing[36] and of the possible sanctions that may attach if the accusation is sustained.[37] The model further affords special protections to the motorist whose poor driving record indicates that a finding of culpability under the current charge may result in suspension or revocation of the license. Immediately prior to the hearing, such a driver who has previously indicated that he will admit the charge is advised of the consequences of a finding of culpability and is offered an opportunity to change his answer to a denial.[38] Such a procedure appears to exceed the minimum requirements of due process.

Additionally, due process requires that notice be timely. The purpose of timely notice is to insure that a party is sufficiently forewarned to prepare his defense. There appears to be no cases in point, but in an analogous situation involving welfare, the California Supreme Court found that three days advance notice of a hearing was insufficient to allow a welfare recipient time to prepare for a hearing in which her entitlement to benefits would be decided.[39] A welfare hearing was also the matter at issue in Goldberg v. Kelly[40] in which the United States Supreme Court determined that seven days advance notice was not constitutionally infirm, although some individual cases might require a longer time. Thus, the minimum advance notice allowed under due process would appear to be something between three and seven days. Since the California Model provides that the hearing date will generally be assigned some fourteen to thirty-five days from the date the notice to appear is issued, no due process problems appear to be raised. Obviously, adequate notice would have to include the date, time, and place of the hearing, a requirement which will be met by the citing officer who lists this date on the notice to appear itself at the time of issuance.[41]

3. Security Deposit

The California Model provides that with all answers of admission by mail, the motorist must deposit the applicable dollar amount shown on the notice to appear, however if the answer is a denial, this requirement is not mandatory, but rather the motorist may tender the applicable deposit when answering.

In the case of a party admitting the alleged violation, no due process problem arises since the party is in effect consenting to the adverse determination. However, a closer examination must be made concerning an answer in the nature of a denial. The model provides that the motorist, in his discretion, can choose not to submit a security deposit with the answer. Therefore, there appears that there is no taking without due process of law or in fact any taking at all prior to having an opportunity to be heard. In the case of a motorist choosing to tender a security deposit, there is again consent and therefore not a due process violation.

It may be well, however, to examine whether the model, if one were to change the discretionary "may" to a mandatory "must" in describing the deposit necessary when denying the allegation, would be violative of due process of law.

The principle of bail, or security deposit in lieu of bail, has evolved, at least in the criminal context, as a right of the accused where under he may provide the court with bail as an alternative to remaining incarcerated while awaiting a further court appearance. Thus bail is to serve as a security to assure the court that the accused will appear when required.[42] In the civil context the purpose of a deposit is to secure the payment of a debt or the performance of a duty.[43] Put then in the civil context, bail is an alternative to civil incarceration.

A typical example of the operation of the security deposit in the traffic offense context is the case of Wyatt v. Municipal Court of Los Angeles,[44] in which the motorist charged with failing to yield right of way to a pedestrian, pled not guilty and deposited security in lieu of bail at a pre-hearing arraignment. The accused later asked that the security deposit be forfeited rather than appearing to contest the matter. In accordance with Vehicle Code Sections 1803 and 13103 a forfeiture of the deposit is equivalent to a conviction and could ultimately result in a license revocation in a given factual situation.

Forfeiture, traditionally, has been utilized to dispose of the vast majority of all traffic violations in California. Bail deposit in traffic cases historically and theoretically was used to insure court appearance, however when the accused fails to appear, the judge can have the deposit forfeited and adjudge it the fine for the offense thus terminating the adjudication. This has resulted in criticism, alleging that bail has evolved as an incentive to reduce the overburdened caseload rather than to assure the appearance of the accused. Also, since the driver must sign a promise to appear to secure his release from custody, he is often under the impression that the further requirement of depositing security is in the nature of a fine, rather than a guarantee to appear.[45]

It can be seen, then, that the use of a security deposit has included not only guaranteeing the appearance of the accused at a subsequent hearing, but also to secure the payment of a debt or performance of a duty and under a forfeiture provision, is used as payment of the fine assessed.[46] In each of the above uses of bail or security deposit, the accused is given an opportunity to contest the amount of bail or whether a security is necessary, prior to the assessment of such a deposit. This concept is consistent with the requirement that property not be taken without due process of law.

If the model were to require that in every case a denial is entered, security must be deposited with the department prior to giving the motorist an opportunity for a hearing, it appears that there would be a taking in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.[47] In the leading case of Bell v. Burson,[48] the Supreme Court of the United States struck down a Georgia statute that required an uninsured motorist involved in a collision to post security in the amount of any judgment which might be rendered against him in a legal action arising from the accident. Failure to post security resulted in suspension of the party's license. While a hearing could be had prior to suspension, its scope was severely limited and did not extend to consideration of either the party's probable liability in the accident or the probable amount of any judgment rendered against him.

In striking down the statute, the court first noted that procedural due process requires that a hearing appropriate to the nature of the case be conducted prior to the state's termination of an entitlement whether the entitlement is

denominated a right or a privilege.[49] Since the drivers license is such an "entitlement"[50] the state must afford the party a right to be heard, and that right to be heard must extend to questions approaching liability and judgment.[51] This reasoning is completely in accord with previous Supreme Court decisions holding that even the temporary impairment of a party's liberty or property interest requires the state to afford a meaningful right to be heard prior to the impairment.[52]

The Bell decision is not only instructional to the California administrative adjudication process, but presents the identical problems that would be presented if a security deposit were mandatory in each case where the motorist enters a denial. If the motorist failed to tender the required deposit the only available recourse of the Department would be to take action to suspend or revoke the motorist's license resulting in a taking of the license prior to providing an opportunity to be heard on the issue of the violation. The mototist must be given the opportunity to be heard on the notice to appear, the event triggering the entire process, in order to avoid a due process violation, just as the court in Bell required that the motorist have the opportunity to be heard on the potential leverage of a judgment resulting from the accident, prior to taking the license.[53]

In conclusion, since the motorist has the discretion as to whether or not to tender a deposit with the Department prior to having the opportunity to be heard, there is not an unauthorized taking in violation of due process of law. Any voluntary deposit, or a deposit in conjunction with an answer in the form of an admission would be a consensual taking and therefore not violative of due process of law.

4. Right to a Speedy Hearing

The right of the accused to a speedy hearing, at least in a criminal prosecution, is not a recent development, but is as basic as the Bill of Rights. The founding fathers provided that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial."[54]

What is meant by a "speedy" trial, however, is not as clear as the availability of the right. The United States Supreme Court in discussing this subject noted that the State must make a diligent, good faith effort to bring the accused to trial to resolve the charge against him.[55] The California

Supreme Court has previously dealt with this issue and noted that it is available in an administrative hearing environment.[56]

It appears that courts have avoided establishing rote time limits to determine whether a proceeding is "speedy", but rather have intentionally retained language denoting reasonableness. This concept is reinforced in a recent California case,[57] where it was observed that an administrative hearing must be held within a reasonable time and without unreasonable delay.[58] Whether a hearing is provided in a "speedy" manner is also determined by the factual situation presented. It has been held that this principle was violated when the California State Fair Employment Practices Commission had not scheduled a hearing within eight months of the filing of a complaint.[59]

This requirement of a speedy hearing, as well as the "reasonable" language in which it is couched is not unique as a judicial mandate. There is precedent for the dismissal of an administrative proceeding under the Federal Administrative Procedure Act, where unreasonable delay has occurred.[60]

It appears that it is not by accident that the requirement for a "speedy" hearing is couched in "reasonable" confines rather than attempting to set specific time limits on a system so flexible. The California Model requires that the hearing generally be scheduled from fourteen to thirty-five days from issuance of the notice to appear. It appears that this requirement is not so soon after the issuance of the notice to appear so as to violate the requirement that there be adequate "notice" to enable the motorist to prepare,[61] and not so long after as to be "unreasonable" as in violation of the requirements that the motorist be given a "speedy" hearing.

B. Hearing Officer

1. Impartial decision-maker

The requirement that the hearing officer in an administrative proceeding be "fair and impartial" is a mandate that virtually everyone in the administrative law community is quick to acknowledge as a necessity. The California Model provides for an impartial hearing officer. The problem, however, is not "whether the hearing officer should be impartial?" but rather, what are the elements and components that, when compiled, result in an impartial conclusion under the potential variety of factual situations.

Professor Davis, in his excellent treatise on Administrative Law, reduced the subject of potential bias to two major areas: (1) Personal prejudice, attitudes toward parties, partiality, and (2) interest.[62]

a. Partiality Arising from Personal Prejudice and Attitudes Toward Parties

The machinery that enables the hearing officer to be impartial and not personally prejudiced in rendering decisions, is put in motion at the initial interview when considering an applicant for the position of hearing officer. This interview and the training which follow must have as its primary objective to inculcate fairness and impartiality into the mind of the hearing officer. The gravity of this principle has been well stated in a training manual for new welfare hearing officers.

> Hearing officers . . . must be conscious of the standards of fairness. The hearing officer, lawyer or layman, must be constantly watchful to avoid conduct or procedures that would introduce unfairness. This is his professional and ethical duty, and it is the most fundamental tenet of administrative law.[63]

This requirement is statutorily mandated in hearings that are subject to the Administrative Procedure Act.[64] Furthermore, the courts have left no uncertainty in requiring that a hearing officer be impartial.[65]

The key then, to this type of hearing officer bias is the personal feelings and ideas of the individual. It only becomes more incumbent upon those in charge of administrative hearings to closely monitor potential hearing officers and to ferret out any personal bias by intensive training.

b. Partiality Arising from Interests

Even though a hearing officer may be completely impartial, in that he harbors no prejudice or partial attitudes, the factual setting may provide "interests" or "attachments" that may tend to prejudice the hearing officer or create an appearance of prejudice.

It should be understood that the mere fact that a hearing officer has conflicting "interests" involved in the adjudication does not make the officer partial. The problem here is that of appearance, in that the "interests" present, invite

speculation of impropriety. The courts have been clear in stating that it is sufficient to establish that sufficient "interests" are present that could cause prejudice, not that actual prejudice is present. The Supreme Court, in discussing the factual setting in which a town mayor also sat as the judge in traffic cases, held that the mayor was not a disinterested or an impartial judicial officer since he had a direct, personal, and pecuniary interest in reaching a conclusion against the violator. The court concluded that this relationship was a violation of procedural due process pursuant to the Fourteenth Amendment.[66] Thus the court did not finally decide whether the judge was actually biased, but only that the conflicting interests arising from the same person holding two positions, one partisan and the other judicial, constituted a denial of due process.

Twenty years earlier the court had applied this rationale to the administrative hearing arena. Concerning a deportation hearing system in which the "presiding inspector" (hearing officer), the "investigating inspector" (under some circumstances), and the "examining inspector" (prosecutor) positions could all be filled by the same person at the same hearing, the court concluded that such a commingling of functions is a denial of due process. The court further reasoned that a complete separation of investigation and prosecuting functions from adjudicating functions is not necessary but that safeguards intended to ameliorate the ends of commingling functions as exemplified here is necessary beyond doubt.[67]

That the agency, whose law is violated, is in a sense exercising functions of both prosecutor and judge when it hears the case by administrative adjudication, does not necessarily deprive the accused of due process.[68] Furthermore, due process could allow a combination of judging and prosecution in the administrative process, but if the record showed a bias or prejudice on the part of the administrative body, its decision could not be upheld.[69]

It is not necessarily in violation of due process then, that the Department of Motor Vehicles employ both, those individuals engaged in the creation of regulations implementing the legislative mandates, and the hearing officers deciding the issues brought under the regulations. Furthermore the method of organization of the administrative adjudication functions under the California Model further separates the hearing officers, who are responsible to an assistant to the Director of DMV, and the originator of the regulations, which

is the responsibility of the appeals board comprised of five members appointed by the Governor and confirmed by the State Senate who are also responsible for the administrative appeal.

Aside from the organizational "interests" which would be violative of due process, it is also necessary that the hearing officers monitor themselves to prevent the adjudication of any issue where the officer has any ties or conflicting interests with the parties to the litigation, whether these interests be financial, blood relationship, or other interests which could create actual or apparent prejudice.[70]

2. Qualifications

The hearing officers performing the adjudicatory function will not be required to be attorneys, but rather will be selected by State Civil Service examination according to minimum qualifications set by the State Personnel Board. These individuals will have appropriate traffic and legal training.[71]

The issue of what qualifications are required of a DMV hearing officer is not one of first impression. The DMV presently holds administrative hearings that can result in revocation of a motorist's license to drive.[72] The necessary qualifications of a present DMV hearing officer do not include a legal education.[73]

Many administrative proceedings within the state are governed by the State Administrative Procedure Act (A.P.A.).[74] The key to whether a certain department must comply with the A.P.A. in administrative proceedings is contained in the Act itself, which states in part that the procedure of any agency shall be conducted pursuant to the Act " . . . only as to those functions to which this chapter is made applicable by the statutes relating to the particular agency."[75]

The applicability of the A.P.A. to the DMV administrative proceedings is of paramount importance since the A.P.A. hearing officer must be an attorney with five years experience.[76] The Vehicle Code is of assistance in that it requires that the A.P.A. govern only where the Vehicle Code is silent,[77] and indeed as stated above, the Vehicle Code is not silent regarding the identity of the hearing officers.[78]

It is important that one not simply disgard the A.P.A. merely because agency hearing proceedings can be exempted from its confines by specific statute. The legislature has provided for the use of the A.P.A. in DMV hearings by stating that the A.P.A. shall control where there is no specific guidance in the Vehicle Code.[79] The sentiment among scholars does not necessarily support this process of avoiding A.P.A. requirements by legislatively exempting administrative proceedings from the Act.[80] To enable one to understand this sentiment and the development in this area one must know the organization of, and purpose of the A.P.A.

a. Background

The A.P.A. was adopted in 1945. It governs or has the potential to govern the disciplinary procedure of most of the business and professional licensing agencies of the state.[81] The Act was adopted after an extensive study by the Judicial Council, the results of which were published in its Tenth Report.[82] This publication is a convenient source of material bearing on questions of interpretation and in the absence of compelling language in the statute to the contrary, it is to be assumed that the legislature adopted the proposed legislation with the intent and meaning expressed by the council in its report.[83]

In its report, the Judicial Council manifested its preference for hearing officers possessing a legal education by emphasizing that a fundamental modification in administrative adjudication was the requirement that trained hearing officers be used to conduct such proceedings and that said hearing officers be well qualified in the fields of law and procedure.[84] Accordingly, the proposed statute provided that all hearing officers must have been admitted to practice law in California for at least five years, in addition to meeting any other qualifications imposed by the State Personnel Board.[85] The Council opined that the provision requiring that all administrative hearings be conducted by qualified hearing officers would assure that all such hearings would provide due process of law and would be conducted in an orderly manner.[86]

The extensive study by the Judicial Council which resulted in the adoption of the A.P.A. revealed that some California Administrative agencies had theretofore required that their hearing officers be attorneys, and some required that nearly all of their hearing officers be attorneys. The Council was further cognizant of, and apparently unimpressed by, the fact that where the hearing officer was not required to be an

attorney, emphasis was placed upon background in the industry and experience which would qualify the individual to act in an informal and impartial capacity.[87]

b. Qualifications Required of Hearing Officers

Notwithstanding the Judicial Council's conclusion that attorneys, by virtue of their training in the fields of law and procedure, were best qualified to fulfill the function of the administrative hearing officer, state agencies have often employed hearing officers, to conduct hearings not subject to the confines of the A.P.A., who are without a legal education and who are unskilled in the techniques of conducting a hearing. This situation has been criticized by a number of legal scholars.[88] Courts also have at times expressed the sentiments of the Judicial Council in stressing the importance of a lawyer as a hearing officer.[89]

Despite the criticisms invoked by the use of laypersons to conduct non-A.P.A. hearings and the arguments advanced for their replacement by attorneys, due process does not require that the person who presides at the non-A.P.A. hearing be an attorney or otherwise qualified to pass on questions of law.[90] This issue has arisen time and again on appeal where the Director of the DMV has appointed a hearing officer who was neither an attorney nor a hearing officer of the Office of Administrative Hearings (OAH) to conduct a formal hearing which culminated in the suspension of an appellant's driver's license for refusal to take a chemical test. The right to appoint a non-attorney hearing officer was upheld in the landmark case of Serenko v. Bright.[91] Moreover, subsequent to Serenko the court has consistently held that where administrative hearings before the DMV are controlled by the provisions of the Vehicle Code, the A.P.A. is inapplicable and the appointment of hearing officers who are neither members of the Office of Administrative Hearings (OAH) nor attorneys to conduct said hearings, is not violative of due process of law.[92]

In Serenko and its progeny, the court has consistently held that although the A.P.A. is a general law relating to administrative procedure in hearings, such regulations must yield to special statute where a variance exists. In so holding, the court took cognizance of the fact that the A.P.A. itself is restricted in its application to implement only those functions of a state agency to which it is expressly made applicable by the statutes relating to the particular agency[93] and that this restriction has been strictly construed

in the past. The court further noted that hearings before the DMV are controlled by the provisions of Vehicle Code Section 13353 itself, the department's hearing procedures are specified within the Vehicle Code[94] rather than the A.P.A.[95] and that the Vehicle Code Section 14112 limits the application of the A.P.A. to those matters not covered by the Vehicle Code provisions.[96]

The court in Serenko also advanced the argument that since the Director of DMV is not required to be an attorney, it follows that the officers or employees of the Department who may be appointed by the Director to fulfill the function of hearing officer may not be required to have any higher qualifications than the Director whom they represent.[97] The court also refuted the appellant's argument that one should be versed in the law to adjudicate a matter requiring the settlement of complex questions of the admissibility of evidence and issues of fact and law by reasoning that to make this requirement would seriously impair the successful performance of the duties for which that board was created.[98]

The premise that non-attorneys can not only legally, but also adequately, function as administrative hearing officers is also set forth in the aforementioned training manual for welfare hearing officers published by an organization of the American Bar Association,[99] where it is stated that:

> Finally, it is important to keep in mind that the administrative process was never conceived to be run by lawyers. Lawyers are not essential to fairness or fair processes, and informed, professional lay hearing officers are perfectly capable of holding fair hearings satisfactory to the most crucial kind of judiciary scrutiny.[100]

C. Hearing Procedure

1. Opportunity to be Heard

"The fundamental requisite of due process of law is the opportunity to be heard."[101]

Merely establishing that one has a right to a hearing is not the end in considering the mandate that one have an "opportunity to be heard". But rather the principle that the accused have an opportunity to be meaningfully heard at the hearing offered, is so fundamental as to render the right to a hearing hollow if the accused does not have an opportunity to be meaningfully heard given an opportunity to present evidence.[102]

Merely requiring that the adjudicatory official provide one with "an opportunity to be heard" is somewhat akin to mandating that the hearings be fair without further instruction. It is necessary to discuss what opportunities the motorist must be afforded at the hearing to provide that this requirement is met. The initial question is whether the motorist must have the opportunity to present oral evidence or whether a writing is sufficient, within the requirements of due process. It also appears that what "opportunities" are required , may very well be determined by what interests are involved.[103] It appears that although due process does not require that one be afforded the absolute right to present oral evidence when presented with an opportunity to be heard,[104] there is strong authority to the contrary as illustrated by a statement by the United States Supreme Court, " . . . A hearing in its very essence demands that he who is entitled to it shall have the right to support his allegation by argument however brief, and, if need be, by proof, however informal."[105]

To examine the "opportunities" necessary when the drivers license is the private interest involved, and safety and traffic control is the public interest involved, it is instructive to realize that a formal hearing has been required by the California Supreme Court in such a proceeding.[106] What is meant by the requirement of a "formal hearing" is far from well settled, however it is instructive to look to the statutes presently controlling DMV drivers license revocation/suspension hearings in which a "formal" hearing is required.[107] The Vehicle Code in dealing with the evidence presentation at a formal hearing deals with the Department's right to present evidence rather than the motorist's.[108] In that it appears that the Vehicle Code is silent as to the motorist's opportunity to be heard, one is referred to the Administrative Procedure Act for guidance.[109] As presented by the A.P.A. the motorist is provided with a wide expanse of "opportunities" to enable him to be heard and present evidence.[110] Some of such "opportunities" are: the presentation of oral evidence, and the right to " . . . call and examine witnesses; to introduce exhibits; [and] to cross-examine opposing witnesses . . ."[111]

Inasmuch as the California Model calls for the motorist to have the right to oral expression and presentation of evidence at the provided hearing, it appears that the due process requirement of opportunity to be heard, is satisfied.

It should also be noted that implied in the concept of being heard is the requirement that one be understood. The model

provides for foreign language interpreters for motorists who cannot speak or read English and therefore one is provided with the opportunity to be understood as well as heard.

2. Disclosure of Evidence

The California Model calls for the motorist to have the right to the disclosure of evidence. That one has the "right to disclosure of evidence" seems to involve two concepts: (1) receiving access to such adverse information prior to the hearing so as to have sufficient opportunity to prepare, and (2) the requirement that all information upon which the determination could be made, be made available to the aggrieved party so that he has an opportunity to confront, cross-examine, and be heard concerning that testimony or evidence presented by the state.

Disclosure of evidence in the context of discovery, is related to the concept of notice covered infra.. As stated therein, the motorist will receive specific notice as to the statute violated, violative conduct, potential consequences, and rights available.[112] Therefore the motorist will have the opportunity prior to the hearing to prepare his defense.

As to the second consideration, that of an aggrieved party having the right to disclosure of evidence so that he may exercise his rights of confrontation and cross examination, any hearing resting its decision on secret or confidential information outside the knowledge of the appellant would be in danger of being upset on judicial review as a violation of due process of law.[113]

The Court in the landmark case concerning administrative hearings, Goldberg v. Kelly,[114] in delineating this requirement stated:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.[115]

It can be seen that in order to afford one the procedural requirements "demanded by rudimentary due process"[116] he must have the opportunity to have knowledge of the evidence to be used against him.

The Administrative Procedure Act (A.P.A.) can also be instructive as to the motorist's rights in an administrative hearing, even though specific statutory guidance can preempt the application of the Act.[117] It should be noted, that the present hearings conducted by the DMV appear to be subject to the provisions of the A.P.A. concerning disclosure of evidence, since the Vehicle Code is silent as to these requirements in the sections covering formal hearings.[118] The A.P.A. provides an extensive opportunity for disclosure of evidence to the party involved prior to the hearing[119] and at the hearing.[120]

It appears that the California Model appropriately provides that the motorist is afforded sufficient disclosure of evidence to meet the due process of law requirements.

3. Right to Representation

In discussing whether a motorist would have the right to be represented by legal counsel at a DMV administrative hearing, attention must be given to separate considerations: (1) Does one have the right to be represented by his own counsel, and (2) whether an indigent is entitled to appointment of counsel at public expense.

The answer to whether one has a right to be represented by one's own counsel is unquestionably in the affirmative.[121]

With the advent of Gideon v. Wainwright,[122] wherein the court held that the due process clause of the Fourteenth Amendment requires that counsel must be provided for a defendant in a criminal case when he is unable to employ his own counsel, there have been some who feel that this right should extend to the administrative hearing.[123] It has been held that a given factual situation may require that there be more than an "empty admonition" that one can secure his own counsel to meet the requirement of a fair proceeding.[124] It should be noted however, that the court continued by stating that a denial of counsel would not, in every case prevent such proceeding from being fair.[125] There is little authority that such a right exists, even though there are times, as discussed above, that a given factual decision may require appointment of counsel to meet the requirement that a proceeding be fair. The Court presented the prevailing position when discussing a welfare hearing in the landmark case of Goldberg v. Kelly,[126] in which the court instructed that "we do not say that counsel must be provided at the pre-termination hearing, but only that the recipient must be allowed to retain an attorney if he so desires.[127]

Recently, the question of whether a right to appointed counsel existed in an administrative hearing was dealt with by the California district court of appeal.[128] The context was that of a disciplinary proceeding against a real estate agent. In reversing the Superior Court Judge's grant of a writ of mandamus on the theory that the appellant had the right to appointed counsel since she could possibly face criminal prosecution, the court stated that the "respondent is entitled to have counsel of his own choosing, which burden he must bear himself, and that he is not denied due process of law when counsel is not furnished him, even though he is unable to afford counsel."[129] The court further reasoned that the proceeding in question does not bear a sufficiently close relationship and identity to law enforcement, in that the objective of this proceeding is for the protection of the public, rather than to punish the offender. The court continued by stating that "[t]here is no constitutional requirement" that the agency appoint legal counsel if the party cannot afford counsel.[130] It appears that the California Model by allowing the motorist to have counsel present at the hearing, but not appoint counsel for the indigent, is within the due process protections required.

4. Confrontation and Cross-Examination

The courts are clear in stating that a determination against one's rights, by an administrative board cannot be based on confidential reports or secret information of which the party to the hearing does not have knowledge. The aggrieved party has the right, as set forth by the California Supreme Court,[131] while dealing with an attempted termination of welfare benefits, to have a hearing in which to present evidence and to confront and cross-examine any adverse witnesses.[132]

The court in Goldberg v.Kelly[133] theorized that "[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."[134] The court continued by discussing the necessity of confrontation to insure fairness by stating:

> While this is important in the case of documentary evidence, is is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of

> confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny.[135]

The California Supreme Court dealt with this issue when the Department of Motor Vehicles suspended a driver's license for failure of the motorist to submit to a chemical test.[136] There the court held that the potential revocation or suspension of a driver's license was sufficiently an adverse consequence that the balancing test invoked the due process safeguards of a formal hearing,[137] which would include the right to confront and cross-examine adverse witnesses.[138]

Inasmuch as the motorist at a DMV administrative adjudication hearing will be provided with the opportunity to confront and cross-examine adverse witnesses[139] this requirement is met.

Another provision of the California Model that should also be discussed at this time is that the motorist can waive his right of confrontation and cross-examination, while denying the charge. The model is clear to demand that this waiver be a "knowing and intelligent waiver", to properly effect the waiver of the rights of confrontation and cross-examination of hostile witnesses.

As discussed above, the rights of confrontation and cross-examination are of constitutional dimensions. The United States Supreme Court has given direction concerning the waiving of a constitutional right, as well as the circumstances under which such a waiver is valid. In dealing with a felony conviction where the respondent argued that the defendant had waived his rights to confrontation and cross-examination,[140] the court required evidence of a waiver in stating that "[w]e cannot presume a waiver of these three [including confrontation and cross-examination] important federal rights from a silent record."[141] The question then, is not whether one can waive his rights, but rather what constitutes a proper waiver.

The California Supreme Court faced this question in considering the consequences the above holding would have on future California prosecutions.[142] The court reasoned that the trial judge must be satisfied that the defendant understands and freely waives his constitutional rights,[143] and that the record must indicate a <u>free and intelligent waiver</u>

and an understanding of the nature and consequences of the waiver.[144] The court continued by stating that the confrontation rights must be "specifically and expressly enumerated . . . and waived," but this requirement is not so demanding as to require " . . . the recitation of a formula by rote or the spelling out of every detail by the trial court."[145] The requirement, as discussed above[146] is discussed in the context of a felony prosecution, which due to the nature of the interests involved invokes the most strict of judicial scrutiny.

The mandate of the California Model that a waiver be "knowing and intelligent" would not only satisfy the due process requirements of an administrative proceeding but also the rigid requirements of a criminal prosecution.

It should be noted that the waiver form itself should be clear and understandable to the motorist and bilingual for a non-English speaking motorist as set forth in the California Model.

The model also requires that when waiving the right of confronting the citing law enforcement officer, the motorist must stipulate that if the officer were at the hearing he would testify to the information contained in the notice to appear. This in no way restricts the motorist's rights to argue his non-culpability since he is not stipulating that the information on the notice to appear is correct, only that, if the officer were there, he would testify to that which he had entered. The model offers a form of statewide venue, in that one can contest a notice to appear received in an administrative adjudication district, at any other administrative adjudication hearing location within the state, based on the prerequisite that the right to confront the citing officer is waived.[147] One might argue that this may coerce one to waive his right of confrontation resulting in a waiver which is not "knowing and intelligent". However, the motorist will have the opportunity to appear in the forum of the issuance of the notice to appear and confront the officer, or waive this right and contest the notice to appear at the hearing office of his choice. So long as this choice is explained to the motorist in a manner to assure that a resulting waiver is "knowing and intelligent" there is not a violation of due process, but rather a unique dimension of convenience for the motorist, that has heretofore been unavailable in the context of traffic adjudication.

5. Privileges

a. The Privilege Against Self-Incrimination

The California Model sets forth that "[r]eference to privileged communication . . . is excluded from the hearing."

In discussing the applicability of the privilege against self-incrimination to the administrative hearing, the general application of the privilege to the hearing when there is threat of a criminal prosecution will first be discussed, followed by a discussion of the availability of this right absent a threat of criminal prosecution. The availability of other privileges involving privileged communication will also be briefly touched upon.

(1) Availability of the Privilege in the Administrative Hearing

A threshhold question in dealing with the applicability of the privilege aginst self-incrimination to a state hearing is whether the Fifth Amendment right has been extended through the Fourteenth Amendment so as to be effective against the states. This question was expressly answered in the case of Griffin v. California,[148] in which a criminal defendant had been denied the opportunity to invoke the Fifth Amendment to remain silent in a state criminal prosecution in California. The court expressly overruled precedent to this effect,[149] in stating that the Fifth Amendment right against self-incrimination is available through the Fourteenth Amendment in state actions.

This privilege was extended to the administrative arena by the court in Spevack v. Klein,[150] where the court held that an attorney facing possible disciplinary action had the right to assert the Fifth Amendment privilege against self-incrimination in an administrative proceeding. California has made privileges available in the administrative hearing by statutory mandate in the Evidence Code. Even though the rules of evidence can be made inapplicable by statute to certain proceedings,[151] the rules regarding privileges are still viable.[152]

(2) Availability of the Privilege Where There is No Threat of Criminal Prosecution

As discussed above, the privilege against self-incrimination does not turn on the nature of the hearing but rather the interests involved. The law is not as clear however, when

there is no threat of criminal prosecution as a basis for asserting the right.

The traditional view was espoused in the California case of Bd. of Education v. Mass.[153] In considering whether the state was able to require public school teachers to give evidence at a hearing regarding their fitness to teach, which was contrary to their employment interests, but not presenting a threat of criminal prosecution, the court held that since only employment was at stake rather than possible criminal prosecution, the witness could be required to testify at the hearing.

Eleven years later the United States Supreme Court in the aforementioned case of Spevack v. Klein,[154] concerning a disbarment proceeding, gave new life to the idea of "personal interests" in jeopardy giving rise to the privilege. The "penalty" in question "is not restricted to fine or imprisonment", as a basis for the Fifth Amendment right against self-incrimination, reasoned the Court, but rather the imposition of " . . . any sanction which makes the assertion of the Fifth Amendment privilege 'costly'".[155]

However, the California district court of appeal in Goss v. DMV,[156] held that a motorist could be called and cross-examined at a license suspension hearing resulting from failure to take a breath test. It is significant that the Goss court did note that the petitioner had not attempted to invoke the Fifth Amendment privilege against self-incrimination at the DMV hearing. The court stopped short of reaching the question of whether its decision might have been different had the petitioner attempted to exercise this privilege.

Presently it appears that the Fifth Amendment privilege is available at an administrative hearing where there is a valuable personal interest in jeopardy, without the threat of a criminal prosecution. There is no California Supreme Court decision on point, however the district court of appeal did acknowledge this fact while dealing with the revocation of a real estate license in the case of Borror v. Dept. of Investment.[157] The court was actually dealing with rights generally afforded in a criminal prosecution, such as the right to appointed counsel, and used the Fifth Amendment right as an example of a privilege extended to the administrative hearing. The availability of the privilege against self-incrimination, noted the court, does not turn on the type of proceeding in which its protection is invoked, but the nature of the statement and the exposure which

it invites. Thus, " . . . it has been held that the privilege against self-incrimination can be claimed in an administrative proceeding where there may be an imposition of any sanction which makes the assertion of the privilege 'costly' to the person invoking the privilege."[158]

(3) The Effect of the Invocation of the Privilege Against Self-Incrimination

As discussed above, the privilege against self-incrimination is available to the motorist at a DMV hearing. The question then, is what effect does the invocation of this privilege have upon the decision process, or in other words, may the hearing officer draw an inference, or comment on the silence of the motorist?

The answer is set forth in the California Evidence Code at Section 913, which states in part that " . . . no presumption shall arise because of the exercise of [a] privilege, and the trier of fact may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding."[159] A different result occurs if the party in question remains silent without being able to assert a privilege. The trier of fact is allowed via the evidence code to draw an inference from one who provides weaker evidence when he has power to produce better evidence,[160] or if the party fails to explain or deny evidence where a privilege is not available.[161] One must keep in mind the distinction between the right to draw "inferences from the evidence in the case" and the fact that one cannot draw any inference "from the exercise of a privilege".

b. Other Privileges

It is well to note that the division of the Evidence Code dealing with privileges[162] does not exclude any privileges when discussing their applicability, but rather states that "except as otherwise provided by statute, the provisions of this division [Privileges] apply in all proceedings".[163] Therefore each of the privileges set forth in the division[164] will be available to the motorist in the administrative hearing under the appropriate factual situation, unless "otherwise provided by statute".

There are many contexts in which the exercise of one or more of the above privileges may arise in the DMV hearing. Suffice it to say that if the privilege is properly asserted, it is available to the motorist.[165]

6. Rules of Evidence

As a prelude to discussing the rules of evidence and their potential applicability to the administrative hearing, it is instructive to realize that the extent of their utility is unsettled not only as to the jurists involved, but also as to writers in the area. Professor Witkin, in his treatise on California Evidence, identified this dilemma in noting that it is impossible to state definitively the extent to which the common law or technical rules of evidence apply in administrative proceedings since these administrative agencies "are too numerous and varied in their functions and operations; statutory and case law coverage of the subject is inadequate; and administrative procedure is in a transitional stage of experimentation and development."[166]

a. Applicability of Common Law and Technical Rules of Evidence

Certain guidance has developed over the years as administrative proceedings have been accepted as a viable force in adjudication. The California Evidence Code, by its own dictates, is inapplicable to administrative proceedings, unless made applicable by statute or unless the agency concerned chooses to apply it.[167]

To find the appropriate context in which the rules of evidence should be framed, it is helpful to examine other agency's course of conduct in the administrative adjudication arena. For example, hearings before the Worker's Compensation Appeals Board are governed by the Labor Code which directs that the board or its referee is not bound by the formal rules of evidence, but may make proper inquiry which will best proscribe the rights and liabilities of the parties.[168] In the conduct of hearings before the Public Utilities Commission, the technical rules of evidence need not be applied.[169] Even though not necessarily controlling, the Administrative Procedure Act, (A.P.A.) is also instructional as to the applicability of the formal rules of evidence. The California Supreme Court, in dealing with an appeal from a liquor license revocation hearing which was subject to the A.P.A. stated:

> Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. . . .[170]

Ample authority exists supporting the proposition that the strict rules of evidence need not be applied to administrative proceedings.[171] The principle that more freedom in the receipt of evidence in administrative hearings is permitted, appears to be accepted almost without question.[172] It is apparent from the above discussion that agencies have the option to determine the extent, if any, to which the evidentiary rules are applicable. While the procedure followed in exercising adjudicative functions by administrative process must meet the standards of fairness imposed by the principles of procedural due process, such proceedings may be and frequently are, quite informal.[173]

b. Policy Considerations Supporting a More Relaxed Attitude Toward Administrative Hearings

Numerous policy reasons are often cited for maintaining relaxed rules of evidence in administrative proceedings. The administrative process is unlike the judicial process in that it has peculiarities quite unknown to the judicial process which are crucial in the formulation of a satisfactory set of evidence principles. Agencies must find facts both formally and informally, in adversary and in non-adversary proceedings, in adjudication and rule-making and in supervisory and investigatory functions that are neither judicial nor legislative. ". . . [I]nformal procedures constitute the vast bulk of administrative adjudication and are truly the life blood of the administrative process."[174]

Professor Wigmore discusses open-mindedly the "Faults and needs of the rules of evidence" and among his pros and cons, asserts that in the United States today, justice can be done without the orthodox rules of evidence, and continued by reasoning that the rules "serve, not as needful tools for helping the truth at trials but as game-rules, afterwards, for setting aside the verdict."[175] Even in courts, the findings made without the application of the rules of evidence are far more numerous than is customarily recognized. Juvenile courts, municipal courts, small-claim courts, summary courts, and the like, are frequently quite unaware of the orthodox rules.[176]

Administrative proceedings, contrary to the inertia existing in courts, often tend to place the burden of finding the truth upon the officers exercising the judicial functions. Therefore, the reasons for admitting or excluding evidence must be based upon the desire not merely to settle a

controversy but to find the truth. The rules of evidence for administrative proceedings should reflect the importance of the subject matter and considerations of economy of government. It has been observed that "[a]ny over-all rule that deals abstractly with a veriable reality is sure to be unsatisfactory", and further, if "requiring the best will cause inconvenience, why not recognize that sometimes inconvenience alone will be sufficient reason for accepting inferior evidence and sometimes not?"[177] The utility of accepting "inferior evidence" from a reliable source in the administrative hearing has found acceptance within the State of California. In Goldberg v. Barger,[178] the trial court had denied a writ of mandamus that would have compelled the insurance commissioner to issue an applicant a life and disability insurance agent license. At the commissioner's request during the administrative hearing, the applicant submitted examination reports by two other states as to insurance companies he had controlled and operated. The reports contained allegations with respect to the applicant, involving violations of law, various other misdealings, mismanagement, and missing company property. The commissioner, on the basis of these reports denied the application as being against the public interest. The district court of appeal, in affirming the denial of the writ stated:

> The fact that the evidence is in the form of a report rather than the oral testimony of a present witness is not determinative of its usefulness or its acceptability to the administrative proceeding * * * . If the opinion evidence is from a reliable source such as made from an investigation by an official board or person whose duty it is to investigate, such opinion is substantial itself even if it constitutes but the only evidence. . . . The fact that such evidence is hearsay does not diminish the propriety of receiving such evidence and its probative value.[179]

A collateral rationale often used by the courts as support for the premise that the formal evidentiary rules are not applicable in administrative proceedings is that many times, members comprising administrative boards are not required to be attorneys or to otherwise have training in the law, and therefore a mandatory use of these technical rules "would have the effect of seriously impairing the successful performance of the duties for which the body was created."[180]

c. Conclusion

In conclusion, there appears to be unequivocal acceptance of the fact that the strict rules of evidence are not applicable to administrative proceedings. Relevant evidence, including hearsay, predicated upon a reliable source should be admissible and utilized by the administrative officers in determining the truth of the matter in dispute. Technicalities have no place in a system of evidence to be administered by examiners without legal training. Professor Wigmore says in one sentence all that needs to be said on this subject: ". . . the jury trial system of Evidence-rules cannot be imposed upon administrative tribunals without imposing the lawyer also upon them; and this would be the heaviest calamity."[181]

7. Record

The California Model provides that, "A complete record of the administrative proceedings will be made by automatic tape recording devices."

a. Necessity of a Record

In a system of adjudication where judicial review is not only necessary as a due process requirement, but also an essential element to effect the proper transfer of the adjudicatory function from the judiciary to the executive, it is clear that there must be a proper record on which appropriate review can be made. The United States Supreme Court in the landmark case of Goldberg v. Kelly,[182] dealt with the "rudimentary due process" requirements, in the context of a welfare benefits pre-termination hearing, and reasoned that at the hearing determining the rights and liabilities of the parties as to the issue at hand, "a complete record and a comprehensive opinion, which would serve primarily to facilitate judicial review and to guide future decisions" would be necessary.[183] The California Supreme Court referred to Goldberg while reaching the same conclusion when also dealing with a welfare pre-termination hearing,[184] reasoning by implication that "a complete record and comprehensive opinion" is necessary at the hearing finally deciding the matter at hand. The necessity of a record in the licensing context has also been faced where the California district court of appeal[185] reasoned that a record must be available to enable the judiciary to examine the proceedings to discover whether there was sufficient evidence to support the findings and whether the decision was based upon proper principles.[186]

b. Is a Tape Recording Sufficient to Serve as the "Record"?

Having established that a record is necessary in an administrative proceeding, the question now presented is whether a "tape recording", as required by the California Model will suffice as that "record". This question is not one of first impression, but appears quite well settled in that a tape recording will suffice as the record upon which a meaningful judicial review can be made.

The California Legislature as well as the judiciary has established the principle that a tape recording is not only sufficient to provide a record, but is also a desirable method due to the convenience and flexibility it extends the administrative proceeding.[187] Therefore, as long as the tape recording is capable of transcription and is conscientiously used by the hearing officer, such a device will provide a proper record.

D. Decision Making

1. Quantum of Proof

The model detailing the provisions of the administrative adjudication scheme, identifies the quantum of proof necessary to sustain an accusation to be that of "clear and convincing evidence". The use of "clear and convincing evidence" as the burden, gives rise to certain threshhold problems that are essentially of a statutory nature. These obstacles will be considered below:

a. Statutory Obstacles

In defining crimes and public offenses, the California Penal Code not only includes the traditional felonies and misdemeanors, but since 1968 infractions are included as well.[188]

A second consideration is that the court[189] has declared that a violation of a Vehicle Code section designated an infraction is criminal in nature.[190] The California Vehicle Code itself aids in this distinction by stating that, "[e]xcept as otherwise provided in the article, it is unlawful, and constitutes an infraction for any person to violate, or fail to comply with any provison of this code, or any local ordinance adopted pursuant to this code."[191] "Therefore", the court in People v. Oppenheimer[192] concluded, "unless otherwise expressly provided, any Vehicle Code violation is an infraction."[193]

The third concern, and actually the culmination of the considerations above, is that the California Penal Code provides that the effect of the presumption of innocence to which an accused is entitled in a criminal action is ". . . to place upon the State the burden of proving him guilty beyond a reasonable doubt."[194] It should be noted that this statute has been strictly enforced by the courts.[195] Inasmuch as (1) infractions are currently defined as a crime,[196] and (2) violations of the Vehicle Code involving infractions are criminal in nature,[197] traffic infractions must be statutorily redefined as something other than crimes or public offenses in order to avoid both the statutory[198] and judicial[199] mandates that the quantum of proof necessary to sustain a conviction, be beyond a reasonable doubt. Therefore, to enable a notice to appear to be sustained in an administrative adjudication of a minor traffic infraction by a burden of proof less than "beyond a reasonable doubt" a complete decriminalization of traffic infractions not only in theory, but also in statutory definition, must be effected.[200]

The above discussion has examined the requirement that presently an infraction is a crime, and therefore the criminal burden of proof of beyond a reasonable doubt applies, however as also discussed, this statutory definition can be amended by the Legislature. It might now be beneficial to examine a jurisdiction where legislation has redefined the infraction so as to not be criminal in nature and invoked a lesser standard of proof than "beyond a reasonable doubt".

b. Comparative Legislation

A system similar to that proposed in California for the administrative adjudication of traffic infractions with "clear and convincing evidence" as the required quantum of proof for a determination of wrongdoing has recently been adopted by the New York Legislature. The validity of that system has been tested in only one case, Rosenthal v. Hartnett.[201] In essence, the Rosenthal court concluded that incident to the constitutional legislative authorization of administrative rather than judicial adjudication of traffic infractions, "clear and convincing evidence" could properly be established as the required quantum of proof for a determination of guilt, where such determination could not result in a sanction of imprisonment. After upholding the constitutionality of the adjudication of traffic infractions by administrative proceedings rather than

by judicial proceedings, the court reasoned that such conclusion ". . . carries with it recognition of the propriety of the use of the procedural apparatus of administrative proceedings, including specifically here an administrative rather than a judicial standard of proof.[202]

In arriving at its conclusion the New York court was cognizant of the fact that New York Penal Law Section 10.0, subdivision 6, included only misdemeanors and felonies within the definition of crimes and that for procedural purposes, Vehicle and Traffic Law Section 155 and Chapter 1075, Section 2, of the Law of 1969 discontinued treating traffic infractions as misdemeanors. In refuting the petitioner's assertion that he had been denied due process of law by the use of the "clear and convincing evidence" standard of proof in the administrative adjudication of his speeding infraction, the court noted that:

> Civil fines and penalties are routinely imposed by administrative action where the predicate therefore has been found on lesser standards than guilt beyond a reasonable doubt.[203]

The dissent's criticism of the majority decision upholding the administrative adjudication of traffic infractions and the use of the "clear and convincing" evidence standard, stemmed from the fact that the New York courts had heretofore consistently recognized the quasi-criminal nature of traffic law enforcement and had generally held that such prosecutions were governed by the rules of criminal law, including the requirement of beyond a reasonable doubt[204] indeed, as late as 1968 in People v . Phinney, the court had declared:

> ". . . a traffic infraction 'is not a crime', . . . [and] not all constitutional protections normally afforded to criminal defendants need be applied to those charged with such a minor offense, . . . [but since] a speeding conviction may have serious implications . . . we have generally held that such prosecutions are governed by the rules of the criminal law.[205]

Notwithstanding the prior case law in New York affording criminal protection in adjudication of traffic infractions, the Rosenthal court made a total departure in finding that the procedural apparatus of administrative proceedings, including the burden of proof, is appropriate for the administrative adjudication of minor traffic infractions. The

majority further gave recognition to the established doctrine that the wisdom of a legislative enactment is a matter for determination of the legislature and not for the courts. The court noted that the legislature is always presumed to have investigated the need for a particular piece of legislation, and referred to the legislative declaration which accompanied the statute in question,[206] in concluding that the administrative adjudication of minor traffic offenses and the administrative burden of proof that follows is not violative of New York law or policy. Once the transfer of the adjudication function to the administrative context is effected, the next consideration is, what standard of proof is appropriate in California in an administrative proceeding?

c. Standard of Proof in California Administrative Hearings

Administrative proceedings are civil, not criminal, in nature. Such proceedings are not conducted for the primary purpose of punishing an individual; rather, their objective is to afford protection to the public. This proposition was articulated by the court in Borror v. Department of Investment[207] when it was concisely stated that:

> Administrative proceedings are civil in nature. With particular references to a proceeding to revoke or suspend a license or other administrative action of a disciplinary nature, it has been held in this state that such a proceeding is not a criminal or quasi-criminal prosecution. . . . The purpose of such a proceeding is not to punish but to afford protection to the public . . . .[208]

Although some of the constitutional rights traditionally protected only within the sphere of criminal prosecutions have been extended to civil administrative proceedings, the right to be pronounced guilty only upon a showing of proof beyond a reasonable doubt is not among them. Accordingly, the court in Borror reasoned that the distinction between an administrative and criminal proceeding becomes less distinct when the identity and objective of an administrative proceeding approaches that of criminal law enforcement.[209] The court in Borror spoke with particular reference to the applicability of the right against self-incrimination and the exclusionary rule to administrative proceedings. Inasmuch as the proposed

administrative adjudication of traffic offenses is not designed for the avowed purpose of punishing those who violate the appropriate provisions of the Vehicle Code, but rather for the protection of the public welfare, such administrative proceedings do not "bear a close identity to the aims and objectives of criminal law enforcement" and therefore the criminal law doctrine requiring proof of guilt beyond a reasonable doubt is not applicable to said proceedings pursuant to the rationale of the court in Borror.

The principle that the criminal standard regarding quantum of proof is not controlling in administrative proceedings, since the purpose of the administrative proceeding is of a regulatory nature with a concern toward the safety and welfare of the public law rather than to punish or otherwise identify with criminal law objectives, was developed by the courts over a long period of time.[210]

With particular reference to administrative proceedings precipitated by violations of the Vehicle Code, the decisions of the court have consistently paralleled the decision rendered in Borror relative to the declared non-punitive nature of such proceedings and thus the general inapplicability of criminal standards to civil administrative hearings. For example, in Johnson v. Department of Motor Vehicles[211] the court stated:

> The suspension of a license because it has been established that the holder of the license is a negligent operator is supported by the same principles of public welfare as is the requirement for examination of operators before granting a license in the first instance. There is involved not the matter of punishment of the operator, but the matter of the protection of the public from the dangers attendant on unskillful or negligent operation of motor vehicles.[212]

This decision was followed in Beamon v. Department of Motor Vehicles[213] where the purpose of the administrative revocation of a driver's license was declared ". . . to make the streets and highways safe by protecting the public from incompetence, lack of care, and willful disregard of the rights of others by drivers."[214] Later in Serenko v. Bright[215] the court alluded to "[t]he legislative power to regulate travel over the highways and thoroughfares

of the state for the general welfare. . . ."[216] The administrative revocation of a driver's license was also expressly held to be civil in nature and not subject to the legal doctrine normally associated with criminal proceedings in Hulshizer v. Department of Motor Vehicles.[217]

Whereas it is clear that the rule in criminal proceedings of proof beyond a reasonable doubt is not applicable in civil administrative hearings, it is not quite so clear precisely what standard of proof is sufficient. In Preyda v. State Personnel Board[218] and Perales v. Department of Human Resources Development[219] the court noted that since the proceeding was civil in nature, the burden of proof requires only a preponderance of the evidence. In Small v. Smith[220] and Realty Projects v. Smith[221] the court declared that in administrative proceedings involving the disciplining of licensees the correct standard of proof to be applied would appear to be convincing proof to a "reasonable certainty".[222] Although there is no uniform rule as to the appropriate standard of proof in a civil administrative hearing, other than that the criminal standard of proof beyond a reasonable doubt is definitely not applicable, the fact that "clear and convincing" is somewhat more rigid than either "preponderence of the evidence" or "convincing to a reasonable certainty" would appear to render it acceptable as the standard of proof to be utilized in the administrative adjudication of civil traffic infractions.

2. Weight of Evidence

a. The Nature of the Problem

Initially it should be noted that at times the courts have confused the question of admissibility of evidence with the question of whether the agency's decision is supported by competent evidence.[223] Therefore, a meaningful discussion within the topic will necessitate a careful analysis not only of the holdings of the leading cases but also of the particular facts peculiar to each case. In discussing the concept of "Hearsay evidence" distinctions must be drawn between evidence which in a court of law would be termed "admissible hearsay" and that which constitutes "inadmissible hearsay" evidence. There is also a question as to whether there is a "sufficiency of the evidence", when the cited motorist answers by denial and requests a change of venue for his administrative hearing. In this situation

the hearing officer will be confronted with the direct testimony under oath of the motorist on one hand, and hearsay evidence consisting of the notice to appear plus a waiver and stipulation form on the other. An analysis of the validity of an administrative decision and sanction, predicated solely upon hearsay evidence is therefore presented.

b. Inadmissible Hearsay Evidence

Under the Administrative Procedure Act, the probative value of admissible hearsay evidence has been recognized. The Act provides that, "[h]earsay evidence may be used for the purpose of the supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."[224] A decision based upon hearsay evidence to which the proper objection is made at the hearing will not support a finding.[225] While if the hearsay is the type that is admissible over objections in court proceedings, it may support a finding, regardless of whether an objection is made,[226] although it has been stated that "[t]he rule has now become firmly established that hearsay alone upon a material issue will not sustain a finding,"[227] a brief survey of the facts and holdings of leading California cases on the subject provides meaningful distinctions to this broad statement.

The California Supreme Court in Walker v. City of San Gabriel,[228] reviewed the administrative revocation of an automobile wrecking business license, in which the damaging evidence was a letter signed by the chief of police alleging numerous charges, stated that there is an ". . . abuse of discretion when it revokes a license . . . without competent evidence establishing just cause for revocation, and that hearsay evidence alone is insufficient to support the revocation of such a license."[229] The court further reasoned that there must be an ". . . assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force."[230] It is significat to note Justice Traynor's concurring opinion in which he states that the evidence under consideration ". . . is clearly hearsay that would be inadmissible in a court trial if proper objection were made"[231] since this proceeding was not governed by the Administrative Procedure Act,[232] the rationale would appear to be applicable to administrative hearings under the proposed traffic adjudication model. Therefore, it may safely be stated that hearsay evidence which would be inadmissible in a court of

law is not sufficient of and by itself to support a finding in an administrative action.

Two recent decisions also appear to be in conformity with this position. In Martin v. State Personnel Bd.[233] the appellate court, citing the Walker decision and noting that it was reached without the support of an explicit statute like Section 11513,[234] held that hearsay evidence which did not fall within an exception to the hearsay rule and therefore inadmissible in a civil action, was not sufficient on which to support an administrative decision dismissing the petitioner from his civil service position. Similarly, in Stearns v. Fair Employment Practice Comm.,[235] the California Supreme Court indicated that under Government Code §11513(c) hearsay evidence which lacked an appropriate exception would not support a finding.

c. Admissible Hearsay Evidence

Administrative decisions based upon "competent hearsay evidence" or that which would be admissible over an objection in a civil action, appear to have been upheld in numerous instances. Professor Witkin has observed, "there is no reason for administrative bodies to be more restrictive than courts; consequently evidence competent in judicial proceedings, including hearsay within an exception, is generally held competent in administrative proceedings."[236] In Fox v. San Francisco Unified School District,[237] the question presented was whether the evidence, which was comprised of six efficiency reports, was sufficient to support the dismissal of a probationary school teacher. The appellate court reasoned ". . . that while it is true that . . . hearsay, properly objected to is insufficient alone to support a finding, if that hearsay would be inadmissible in a civil action . . . that rule does not apply to admissible hearsay." The court concluded that the records in question were admissible as business records, and thus the decision was adequately supported by appropriate evidence.[238] Although this is merely a district court of appeal decision, a meaningful distinction has been drawn between the sufficiency of admissible evidence presented here and inadmissible hearsay evidence as presented in the Walker case. The weight of authority leads one to reasonably conclude that evidence which falls within an exception to the hearsay rule has probative value and constitutes competent evidence upon which an administrative decision may be based.[239] Indeed, the probative value of admissible hearsay evidence can hardly be denied. Professor Davis, a leading proponent

of the view that hearing officers should make no distinction between hearsay evidence and non-hearsay evidence takes the matter one step further, in observing that the reliability of both hearsay and non-hearsay evidence "ranges from the least to the most reliable". Therefore, the guide "should be a judgment about the reliability of particular evidence in a particular record in particular circumstances, not the technical hearsay rule with all its complex exceptions."[240]

d. Basis on Which Hearsay Evidence is Admissible

With the foregoing in mind it will be advantageous to review the traditional basis behind the exclusionary hearsay rule and the modifications embodied within the proposed traffic adjudication model when the motorist answers with a denial requesting a change of venue for his administrative hearing.

The facts, upon which the credibility of testimony depends are the perception, memory, and narration of the witness. Therefore, in order to encourage witnesses to put forth their best efforts and to expose inaccuracies which might be present with respect to any of the foregoing factors, there are three elements identified as generally required under which testimony is received; (1) oath, (2) personal presence at trial, and (3) cross-examination.[241] "The rule against hearsay is designed to insure compliance with these ideal conditions, and when one of them is absent the hearsay objection becomes pertinent."[242] All three of the foregoing ideals are called for in the California Model, and only if the motorist gives a knowing and intelligent waiver to confront the issuing officer, will any of these elements be absent. Certain procedural safeguards are inherent within the notice to appear. Since it consists of an out of court statement which will be offered to prove the motorist committed a traffic violation, the evidence would be hearsay.[243]

Since it would appear that the notice to appear, standing alone, would be hearsay, the important question that arises, is whether the notice to appear would be admissible under an exception to the hearsay rule. That a document qualifies as admissible evidence under the business records exception to the hearsay rule[244] there are four criteria that must be met; (a) the writing must be made in the regular course of business, (b) it must be made at or near the time of the event, (c) the custodian or other qualified witness testify as to its identity and mode of its preparation, and (d) the

sources of information and method of preparation were such as to indicate its trustworthiness.[245] As can be seen all of the above elements are present in the evidentiary presentation of the notice to appear, except the presence of the officer testifying as to the mode of preparation of the notice to appear. In place of the presence of the witness is a stipulation[246] that if the officer were present he would testify to that information entered on the notice to appear. If by chance, one were to interpret the notice to appear so as to not qualify as a business record, under the expanded California definition, the record would most certainly qualify as an official record and as such be admissible hearsay.[247] It is also important to note that, but for, the motorist's waiver of the right to confront the issuing officer, he would be present to testify to events within his personal knowledge taking the entire matter out of the realm of hearsay.

Inasmuch as it appears that the notice to appear offered into evidence would qualify as a business or an official record, and thus be admissible hearsay, it could properly be sufficient evidence on which to base a decision, even if the conflicting evidence were testimony under oath. With utilization of the stipulation and waiver form, the California Model more than adequately provides for the first two (oath and personal presence) of McCormick's three ideal conditions. In requesting a change of venue for his administrative hearing the motorist will make a knowing and intelligent waiver of his right to have the officer involved, personally present. Therefore, the motorist in return for the convenience of having the hearing held in the locality of his choice has waived his right to confront the officer and the notice to appear will in essence be substituted for the narrative testimony. The third of the ideal conditions, the right to cross-examine, is generally agreed to be the main justification for the exclusion of hearsay.[248] The general trend of state court decisions is to insist that the right of cross-examination be afforded unless it would be impractical to do so.[249] However, in some cases, denial of cross-examination may not deprive the accused of a fair hearing when there is a clear showing of the reliability of the data. The same principle was espoused in the previously cited cases of Fox v. San Francisco Unified School District[250] and Goldberg v. Barger.[251] The nature of the training a hearing officer receives, coupled with a knowing waiver of the presence of the officer, and a stipulation by the motorist as to the contents of the notice to appear, would appear to more than adequately establish the reliability of the information presented into evidence. A policy requiring the citing officer

to be available at administrative hearings in every county where administrative adjudication is implemented, notwithstanding the place of issuance of the notice to appear, presents an obvious impracticality.

e. Conclusion

In conclusion, authoriative case precedent exists in support of the proposition that "admissible hearsay" evidence which falls within an exception to the hearsay rule, is sufficient on which to base an administrative decision. Although no California Supreme Court decision has been rendered in support of this position, a meaningful distinction between admissible and inadmissible hearsay evidence supporting administrative sanctions has been drawn by the appellate courts. The California Model in adopting the waiver and stipulation forms has not only provided additional safeguards with respect to the reliability of the evidence offered, but has also shown proper respect for the constitutional rights of the motorist involved.

3. Written Decision

In a confrontation hearing in the administrative adjudication of minor traffic offenses, "the hearing officer must orally state the decision and the reasons for the decision. This will be recorded by the recording devices, and will constitute having a written decision".[252]

a. Necessity of a Written Decision

The rationale for having a written decision in an administrative hearing is similar to that requiring a record to be made of the proceeding. That is, to provide a proper vehicle for administrative and judicial review and to provide guidance for like subsequent decisions. An additional purpose of the written decision is to afford the parties concerned, notice of the decision and reasons on which the decision was based, as well as to provide any instructions to the parties to enable any desired compliance. The court in the aforementioned case of Goldberg v. Kelly,[253] touched upon this requirement by stating that "the decision maker should state the reasons for his determination and indicate the evidence he relied on".[254] The California Supreme Court also alluded to this requirement, in the context of a welfare hearing,[255] when stating that a "comprehensive opinion" is not necessary at the pre-termination hearing, however by implication, such would be necessary at the statutorily mandated hearing.[256]

It is helpful to examine a situation in which the petitioner was denied a license to create a savings and loan business by the California Savings and Loan Commission. The district court of appeal,[257] found that there was a due process of law violation in that the hearing officer denied the license application without stating his reasons or putting his decision in writing, and also since the commissioner's decision came after his own subsequent investigation. The court continued by reasoning that the basic purpose of a written decision is, to assist the judiciary on review, determine if there was sufficient evidence to support the findings, and whether it was based on a proper principle. The court also noted that the hearing was subject to the Administrative Procedure Act (A.P.A.) and therefore must comply with the requirement of a written decision thereunder.[258]

There is also statutory authority that certain hearings provide for a written decision. The Administrative Procedure Act provides that in A.P.A. hearings a written decision, containing the reasons for the decision shall be issued.[259] The present DMV drivers license suspension/revocation hearings must also provide a written decision including findings of fact.[260]

b. Sufficiency of the Tape Recorded Decision as a Writing

As discussed, a written decision is required and the model does provide that there be a written decision. The critical factor is whether the hearing officer's statement on tape of the decison and the reasons for the decision will suffice as the "written decision".[261]

A distinction should be made at the threshold that may serve to clarify this discussion. In hearings conducted pursuant to the Administrative Procedure Act, welfare hearings, and DMV hearings, as discussed above, it should be noted that in each case, only the power to hear is delegated to the hearing officer with the power to decide the issue remaining in the agency itself or persons so designated.[262] There is, therefore an additional reason for the written decision to literally be in writing, that being for administrative expediency, since the decision must be processed and adopted by one having the authority to finally decide the issue. The California Model provides for the delegation of both the power to hear as well as the power to decide, to the hearing officer since the decision is tendered at the conclusion of the hearing, therefore negating

CONTINUED

1 OF 4

the necessity of a literal writing for administrative review prior to actually rendering the decison.[263]

As to the nature of a writing, the evidence code gives meaningful guidance. A writing is defined very broadly by the California Evidence Code to include "all forms of tangible expression, including pictures and sound recordings."[264] It appears then, that the dictating by the hearing officer into the official tape record, the decision and the reasons for the decision is sufficient to comprise a writing. This "writing" would provide the necessary due process protections, in that there would be sufficient notice to the motorist of the decision and an adequate record and decision provided, from which a transcript could be made to afford meaningful judicial review.

E. Sanctions

In determining whether the administrative adjudication of traffic violations is in violation of the separation of powers doctrine, the courts will look closely at the sanctions that the Department of Motor Vehicles proposes to use. Certain sanctions such as imprisonment, may only be applied by the Judicial Branch.[265]

Currently, traffic courts of California have the authority under statute to impose fines and suspend or revoke licenses for traffic infractions.[266]

The Administrative Adjudication Model provides for basically four sanctions: (1) Suspension or Revocation of Drivers License, (2) Monetary Sanctions, (3) Educational Counseling Programs, and (4) Alternative Service in Lieu of Monetary Sanctions.

This section undertakes to determine whether these sanctions are permissible under the separation of powers doctrine.

1. Suspension and Revocation of License

It is now well accepted that these provisions are not traduced by delegation to administrative agencies of the power to suspend or revoke professional license for cause.[267]

While conceding that the power of an administrative agency to suspend or revoke licenses is, in a sense, judicial, the California courts have nevertheless held that it is not "judicial" within the meaning of the Constitution.[268] More recent cases have indicated that the separation of powers is not violated by suspension or revocation of a driver's

license by the Department of Motor Vehicles. In Escobedo v. State of California,[269] a statute authorized the Department to demand a security deposit of any uninsured motorist involved in a serious accident and to suspend the license in the absence of such deposit. The California Supreme Court held that delegation to the Department of such discretionary authority did not violate the California Constitution providing for the separation of powers.[270]

A statute investing the Department with more limited discretion in the suspension of licenses was upheld by an appellate court in Cook v. Bright.[271] There, the statute required the Department to suspend for three years the license of any driver convicted in traffic court of drunken driving three times within 10 years. The district court of appeal held that delegation to the Department of the authority to count convictions and to suspend licenses did not vest the Department with such undue discretion as to violate the separation of powers doctrine.[272]

The authority of the hearing officer, under the California Model, to sustain or dismiss the accusation for the purpose of license suspension or revocation does not appear to differ materially from that enjoyed by professional licensing boards in cases cited above. Nor would the power enjoyed by the hearing officer to suspend or revoke the license, based on a finding that the driver has violated the law, appear to involve undue discretion. That power would, under the California Model, be exercised with reference to a Uniform Sanction Guide thereby limiting the purview of individual hearing officers.

Delegation to the Department of Motor Vehicles of the authority to sustain or dismiss the accusation against drivers receiving a notice to appear, and to suspend or revoke licenses according to those findings, subject to judicial review under the applicable standard, would not appear to violate any constitutional requirements.

2. Imposition of Monetary Sanctions

There is far less certainty, and practically no case authority in California, dealing with the question of whether the delegation to an agency of discretion in imposing fines will constitute a violation of the separation of powers doctrine. The current trends of thought seem to point to its permissibility, but there is strong opinion to the contrary. Concerning a

New York State statute which empowered the New York State Insurance Commissioner to assess a fine against insurance companies for violation of legislatively enacted provisions, one respected commentator noted:

> It is difficult to imagine a statutory provision more repugnant to the basic principles upon which our administrative law is grounded. It violates the fundamental rule that the imposition of money penalties is, with us, a judicial, not an administrative function. The dangers inherent in allowing administrative authority to extend to the imposition of monetary penalties seem clear, and because of them, statutes like the New York Law under discussion are comparatively rare, the usual thing being for the legislature itself to prescribe that the infraction of administrative rules or orders shall be subject to a state penalty as a breach of the act.[273]

The statute in question, however, was subsequently upheld by the state's highest court.[274] However, in Tite v. State Tax Commission,[275] the Utah courts disapproved a similar statute which granted to the State Tax Commission the authority to impose on cigarette sellers a fine ranging between $10 and $299 for failure to affix tax stamps to the package.[276] Of the Tite case, one critic had written, "Yet the same court would no doubt sustain a grant of power to determine the length of suspension of a license, which might be worth many times $299. The difference between money and other interests seems an extremely unsatisfactory place to draw the line. The federal courts wisely avoid the distinction between monetary and other penalties."[277] The continued viability of the Tite doctrine, even in Utah, is uncertain in light of the Utah Supreme Court's holding in Wyckoff Co. v. Public Service Commission.[278] There, without any mention of Tite, the court upheld the constitutionality of a statute which delegated to the State Public Service Commission the authority to impose fines of between $500 and $2,000 for statutorily prescribed offenses.

In determining whether or not the separation of powers doctrine has been traduced by an agency's authority to impose penalties, the courts apparently look to three elements: (1) the issue of whether the penalty is civil or criminal in nature,[279] (2) the extent of the discretion of the agency in imposing the penalty,[280] (3) the question of whether the standards to be enforced by the agency are to be promulgated in the first instance by the agency or by the legislature.[281]

Taking these in reverse order, the third consideration appears to pose no problems. Under the California Model, the conduct constituting an infraction which is to be administratively adjudicated is defined and proscribed by legislative action and set out in the Motor Vehicles Code.[282] Presumably, the legislature would set the parameters on the specific monetary sanctions permitted. Nor is it the discretion of the referee in imposing the penalty of sufficient magnitude to disturb separation of powers considerations. Under the California Model, sanctions will be invoked with reference to a uniform sanction guide. The central question then is whether the monetary sanction may possibly constitute a criminal penalty.

It is probable that monetary sanctions of a civil nature can be imposed without distressing the separation of powers doctrine. There appears to be no California cases on point, but a line of cases from the Illinois courts is instructive. There, a statute empowered in the State Pollution Control Board to impose penalties of up to $10,000 for violations of the provisions of the Environmental Protection Act or of regulations enacted by the Board itself. In the leading case, City of Waukegan v. Pollution Control Bd.,[283] the Board imposed fines totaling $1500 against three appellants for violation of the Act. Appellants contended on appeal that the imposition of monetary fines by an agency constituted a violaton of separation of powers. The Illinois Supreme Court rejected the argument, noting further, "[i]t is clear that the trend in State decisions is to allow administrative agencies to impose discretionary civil penalties."[284] At the heart of the court's decision was the determination that the separation of powers doctrine did not forbid the exercise of an executive agency of some power conventionally exercised by the judiciary or legislature, so long as the agency remained subject to control by the legislature and to review by the judiciary.[285] The Illinois separation of powers clauses are almost identical to those contained in the California Constitution[286] and while there can be no guarantee that California would adopt a similar view, the constitutional construction of the respected Illinois court must necessarily have some persuasive effect.

The Illinois court clearly acknowledged that it was approving only the administrative imposition of civil penalties and a subsequent appellate case in the same state has indicated that imposition of criminal sanctions was beyond the purview of an administrative agency.[287]

The distinction between civil and criminal actions has been dealt with at length above in the discussion of separation of powers and it is likely that traffic offenses could be decriminalized without meeting constitutional objection.[288]

While there appears to be no cases in California involving monetary civil "sanctions", the California courts have in several instances upheld the constitutionality of statutes which empowered agencies to order payments of money by other individuals or entitities. Thus, a regional planning agency may require payments for its support from its member counties;[289] the State Superintendent of Banks may determine the necessity for liquidating a bank and may fix the amount of assessment against each stockholder;[290] and the State Unemployment Insurance Appeals Board may order payments by an employer to a state fund to compensate for payments made from the fund to a former employee.[291] In the aforementioned case of Escobedo v. State of California[292] the California Supreme Court permitted the Department of Motor Vehicles to require a security deposit in the amount to be determined within the discretion of the DMV.[293] These cases reinforce the theory that where there is no punitive intent, but rather a clear relation between the money payment sought and some broad public interest, the courts will not disturb the agency's authority by invoking separation of powers.

3. Other Sanctions

The Administrative Adjudication Model provides for additional sanctions of participation in education or counseling programs, and community service as an alternate for monetary sanctions.

Currently, the Department of Motor Vehicles has the authority to require drivers training in lieu of suspension or revocation of a license.[294] Such an additional sanction is currently in the framework of a condition of probation. Such condition of probation is in lieu of the ultimate sanction of suspension or revocation of the license. The statutes also allow the DMV to grant probation on such ". . . reasonable terms and conditions as shall be deemed by the Department to be appropriate."[295]

While there is no case law supporting or criticizing the alternatives of educational or other non-monetary sanctions, it seems clear that they are allowed as long as they are given in lieu of suspension or revocation of the drivers license.

4. Conclusion

As has been mentioned, it is clearly within the authority of the DMV to suspend or revoke drivers licenses. The law is not as well settled concerning other sanctions.

In almost all cases, monetary or other sanctions would be much less drastic than the sanction of suspension or revocation of the license. The model provides that if there is a failure to comply with an imposed sanction, DMV would be able to suspend a driver's license. It is clear that the foundation for all other sanctions, and the ultimate tool that can be used as a method of enforcement is the suspension or revocation of the driver's license.

Therefore, the right of an administrative agency to levy monetary and other sanctions would be strengthened by an express legislative recognition that the monetary or other sanction is merely an alternative to suspension or revocation of the license. Since the more drastic sanction of revocation or suspension of the license is clearly within the authority of the administrative agency, the less severe alternative of a monetary or other sanction should certainly be permitted.

F. Judicial Review

1. Mandamus

The established process in California of submitting a decision of an administrative agency to the courts for judicial review is by means of a writ of mandamus[296] and not by means of certiorari.[297] The reasoning of the courts in this respect appears to be this: (1) Certiorari lies only for the review of judicial decisions.[298] (2) The determination of an administrative agency cannot be called "judicial", since to do so would be to admit that the powers of the judiciary have been invested in the executive, clearly a violation of separation of powers.[299] (3) Thus the proper channel for review of agency decisions is the writ of mandamus.[300] While this approach may seem nothing more than a semantic nicety, it is nevertheless a nicety which has been both codified[301] and reaffirmed in a recent California Supreme Court decision.[302]

2. The Forum

In considering the proper forum for judicial review the municipal court system is an obvious choice due to its long

standing expertise developed in the area of traffic offenses. However, it is important to note that municipal courts are not currently authorized to issue writs of mandamus.[303] Any statute which undertook to vest in the municipal court the power to issue writs of mandamus in cases involving appeals from DMV decisions under the California Model would have to overcome the obstacle posed by Article VI, Section 10 of the California Constitution which delegates original jurisdiction for mandamus only to the Supreme Court, the courts of appeal, and the superior courts.[304] Whether this constitutional delegation of original jurisdiction is also meant to be exclusive, thus depriving the legislature of the power to authorize mandamus actions in the municipal court, is a question that has apparently not been litigated.

3. Grounds for Review

Under current law, Section 1094.5(a) of the Code of Civil Procedure sets forth the grounds upon which the review court will issue a writ of mandamus ordering the agency to set aside its decision. The writ will issue where (1) the agency has proceeded either without jurisdiction or in excess of its jurisdiction, or (2) where the hearing was not "fair" or (3) where there has been a prejudicial abuse of discretion. It is worthwhile to discuss the character of the court's review in each area.

Where petitioner alleges that the agency proceeded without proper jurisdiction, the court will issue the writ only if it appears clear as a matter of law, that jurisdiction was defective.[305] If jurisdiction depends on findings of fact which were not made at the hearing, the court will remand the case to the agency for proper findings.[306] If, on the other hand, findings of fact controlling jurisdiction have been made, the court will review the evidence to determine if the findings are properly supported.[307] Whether the court invokes the independent judgment review[308] or the substantial evidence review[309] will turn on whether the right affected by the hearing is fundamental and vested.[310]

When petitioner seeks the writ on the grounds that his hearing was not "fair"[311] the court exercises its independent judgment in reviewing the administrative record to determine whether the requirements of due process have been met.[312]

The third ground for issuance of the writ of mandamus, abuse of discretion, may be established by any of three

showings: (1) that the agency did not proceed in the manner required by law, (2) that the agency decision was not supported by the findings of fact, (3) that the findings of fact were not supported by the evidence.[313]

Generally, the question of whether an agency proceeded in the manner required by law will involve the interpretation of a statute.[314] Where construction is the issue, the court is inclined to assign weight to the agency's prior interpretation of the statute, a view which will tend to favor the petitioner only if the instant interpretation is at variance with the agency's prior holdings.[315] When abuse of discretion is sought to be proved by showing that the decision is not supported by the findings of fact, the court looks to determine whether the findings are sufficiently clear to determine if the law was correctly applied,[316] and if clear, whether they describe conduct prescribed by the statute.[317]

Finally, abuse of discretion is shown when the petitioner demonstrates that the findings are not supported by the evidence. As noted above,[318] the standard by which the court reviews the sufficiency of the evidence differs according to the nature of the right involved. Where the right is vested and fundamental, the court will exercise its independent judgment and reweigh the evidence.[319] When the right is non-fundamental, the court looks simply to see if the agency's findings are supported by substantial evidence.[320] It remains to be considered in which category the court will place one's right to a driver's license. Although the California Supreme Court has never ruled expressly on the issue, it is highly likely that one's entitlement to a driver's license would be declared a fundamental vested right and thus would trigger independent judgment review by the trial court. In Bixby v. Pierno[321] the California Supreme Court undertook to define the term "fundamental vested right":

> In determining whether the right is fundamental the courts do not alone weigh the economic aspect of it, but the effect of it in human terms and the importance of it to the individual in the life situation.[322]

Whether or not a right is vested turns on whether or not the individual currently possesses it and is theoretically only one element to which the court looks in determining whether the right is fundamental.[323]

Invariably, however, a court's finding that the individual currently possessed the right - i.e., that it had vested -

has triggered the independent judgment test, without further scrutiny of whether it was in some manner "fundamental" even though not vested.[324] Agency actions which have affected rights sufficiently vested and fundamental to trigger the independent judgment review have included the following: denial of full widow's benefits;[325] revocation of a physician's license;[326] revocation of a teaching credential;[327] denial of unemployment insurance benefits;[328] revocation of a druggist practitioner's license;[329] suspension of physician's license;[330] suspension of a real estate broker's license;[331] revocation of an optometrist's license;[332] denial of petition for reinstatment to a civil service position;[333] removal of pharmaceutical manufacturer's products from a state approved list;[334] removal of chiropractic school from a state approved list;[335] State Insurance Commissioner's denial of selected group disability insurance to an organization;[336] suspension of license to conduct business as a processor of farm products;[337] suspension of a farm produce dealer's license;[338] order to petitioner to reimburse the state's Unemployment Compensation Disability Fund for amounts paid to petitioner's former employee;[339] and suspension of an insurance license.[340]

Where the petitioner does not presently possess the right asserted, but is merely applying for it, the courts have tended to find the right to be non-fundamental, and have limited their review to a consideration of whether there was substantial evidence in the record to support the hearing officer's findings. Agency actions to which the court has applied substantial evidence review include: approval by State Commissioner of Corporations of a recapitalization plan;[341] denial of application for old age assistance;[342] denial of application for racing license;[343] denial of application for Aid to the Totally Disabled;[344] school board's determination not to rehire a probationary school teacher;[345] and rejection of corporation's attempt to block the licensing of a competitor.[346]

There is every reason to believe that driving is considered to be a fundamental right in California. In Escobedo v. California,[347] the Supreme Court of California cited the following quotation with approval:

> The use of the highways for purpose of travel and transportation is not a mere privilege, but a common and fundamental right, of which the public and individuals cannot rightfully be deprived. . . [A]ll persons have an equal right to use them for purposes

of travel by proper means and with due regard for the corresponding rights of others.[348]

Although Escobedo was concerned with the constitutionality of a financial responsibility statute, and not with the scope of review in a mandamus proceeding, it is unlikely that the court intended to denote driving as fundamental for some purpose and non-fundamental for others. Several appellate cases bear this out.

In James v. State ex rel. Department of Motor Vehicles,[349] the petitioner's driver's license had been suspended following a formal administrative hearing which found he had refused to take a test to determine intoxication. The court stated:

> Since the deprivation of an existing license interferes with an existing vested right [citations] and since Department is a statewide agency of legislative origin,... the independent judgment of the trial court should be used to ascertain if the evidence was sufficient to support the findings of the administrative board in the instant case.[350]

Although the court does not hold expressly that the petitioner's right to a license is "fundamental", the application of the independent judgment test leads to this conclusion. The James court relied partially on an earlier decision, Finley v. Orr, [351] which upheld a license suspension on similar facts. In support of the constitutionality of suspension by administrative hearing, the Finley court noted that the findings had been subject to review by the Superior Court and referred to Hohreiter v. Garrison,[352] an insurance license revocation case in which the applicable standard of review was held to be independent judgment. The inference lies that in Finley, the court intended independent judgment review to apply to driver's license suspensions as well, and that one's right to a driver's license is therefore "fundamental".

The California case holdings indicate, therefore, that a driver's license, once obtained, is a fundamental vested right and that suspension by an administrative hearing requires that the Superior Court exercises its independent judgment in reviewing the sufficiency of the evidence to support the Findings of Fact.

Review of monetary sanctions would probably entail independent judgment as well. Inasmuch as failure of a driver to pay the

monetary sanction imposed by DMV would apparently result in suspension of the license, the independent judgment review would most likely be invoked by the courts. Further, there is authority in California for the proposition that the court will exercise its independent judgment in reviewing an agency decision ordering payments of money.[353]

The Administrative Adjudication Model provides for judicial review by the superior court. Presumably, this appeal would be by writ of mandamus and would be subject to the rules that have been discussed, thereby satisfying the requirement of adequate judicial review of administrative adjudications.

G. Equal Protection of Laws

There appears the possibility that the implementation of administrative adjudication of minor traffic offenses in California may not, at least initially, be on a statewide basis. There arises the question then, of whether an implementation of the scheme on less than a statewide basis would be violative of the constitutional requirement that one be given equal protection of the law.[354] This question was presented to the highest court in the State of New York,[355] when that state implemented administrative adjudication of minor traffic offenses only in cities having a population of one million or more.[356] The question arose when a New York motorist was fined $15 in accordance with a hearing officer's determination that he had been in violation of the speed laws. The burden of proof used at the administrative determination was "clear and convincing evidence". The motorist alleged on appeal that he had been denied equal protection of law, in that he was found in violation of law by "clear and convincing evidence", where a fellow state citizen cited in a city with a population of less than one million would not be convicted unless the proof against him was found to be "beyond a reasonable doubt". The court, in upholding the statute, stated that it is not a violation of the equal protection clause of the Fourteenth Amendment to have different burdens of proof between one county and another throughout the state.[357] The court cited the United States Supreme Court[358] in reasoning that the equal protection clause relates to equality between persons rather than between areas, or in other words "[e]qual protection does not require territorial uniformity of law within a state".[359]

In treating the supposition that an equal protection violation occurs when one does not receive the same protection under the

laws as another person not so situated, the court has spoken in terms of the necessity of a rational classification.[360] A "statute is not invalid under the Constitution because it might have gone farther than it did".[361] The court has held that the legislature need not "strike all the evils at the same time",[362] and that "reform may take one step at a time".[363] The court gave further instruction in the case of McDonald v. Board of Education[364] where inmates of a county jail awaiting trial, being unable to appear at the polls to vote (either due to inability to raise bail or due to the nature of their incarceration), challenged a statute which did not provide for their receipt of absentee ballots. In noting that their right to vote was not at stake, but only their right to receive absentee ballots, the court held that the classification must bear a rational relationship to the legislative end and is only set aside, as violative of equal protection, if it is based on reasons totally unrelated to the pursuit of that goal.[365] The court further reasoned that the scheme at hand was not arbitrary, but rather a "consistent and laudable state policy of adding, over a 50-year period, groups to the absentee coverage as their existence comes to the attention of the Legislature."[366]

The California Supreme Court has also faced the equal protection argument in the context of classifications of state citizens receiving different treatment. In Whittaker v. Superior Court of Shasta County,[367] the petitioner contended that he was a victim of invidious discrimination in violation of equal protection of the law, since he did not have the opportunity to have his appeal from justice court heard by a three judge appellate panel, while citizens within counties having a municipal court had this opportunity. The court held that neither the provisions of the United States Constitution or of the State Constitution proscribe legislative classificatin per se, but rather assure that ". . . persons in like circumstances be given equal protection and security in the enjoyment of their rights."[368] "Finally, a classification based on legislative experience is presumed valid and will not be rejected unless plainly arbitrary."[369]

The equal protection question presented then, if the California system of administrative adjudication is instituted on less than a statewide basis, is, does the classification in question bear a substantial and reasonable relationship to a legitimate legislative objective? A legislative classification based on factors such as geographical area, population or other relevant considerations, would not deny equal protection of laws unless such classification is shown to be palpably arbitrary and without a sound basis in reason. As

stated by the California Supreme Court, a rational classification would not be violative of the Constitutional requirement that one have equal protection of the laws as long as "persons in like circumstances [are] given equal protection and security in the enjoyment of their rights."370

III. CONCLUSION

It was not the purpose of this analysis to discuss the fiscal or organizational feasibility of administrative adjudication.

The legal analysis dealt with the constitutional feasibility of the proposed model for administrative adjudication, and discussed some of the impact of current statutes of the proposed system.

The conclusion of this analysis is that there are no constitutional impediments to the model for adminstrative adjudication with proper amendments to existing statutes and new statutes clearly setting out the provisions of the model, the administrative adjudication system will fit well into the current framework of California government. It is also concluded that de-criminalization and administrative adjudication of traffic infractions would establish a system more closely related to the recognized goal of public safety than the present system of adjudication.

ANNEX I

INCLUSION OF THE JUVENILE VIOLATOR IN THE ADMINISTRATIVE ADJUDICATION PROCESS

The California Model provides that the procedure for handling juveniles between the ages of sixteen and eighteen years of age would be basically the same as for adults. Juveniles under sixteen years of age, would be referred to the appropriate juvenile authority.[371]

The discussion herein deals with this provision, presenting the public policy rationale upon which the juvenile court system is based, and any legal problems possibly arising from such a transfer. It appears that, not only is this provision legally permissible, but also tends to answer some recent criticism directed at the juvenile adjudication system.

Historically, juvenile violators have been thought to merit the special attention of a separate court. Ordinary criminal treatment has been considered incompatible with the goal of rehabilitation because it was often insufficiently individualized and the rehabilitative potential of the individual could be destroyed by the social stigma attached to criminal conviction.[372] Thus society determined that the best way to deal with youthful offenders was to rehabilite them. Consequently, separate treatment facilities and a separate court were established for the juveniles.[373] By statute, original jurisdiction over juvenile traffic offenders was vested in the juvenile courts. These courts were really the superior courts acting under provisions of the juvenile court law and were presided over by superior court judges who had been designated juvenile court judges.[374]

In order to achieve a protective rather than adversary atmosphere, juvenile court procedure is substantially more relaxed than ordinary criminal procedure. The juvenile traffic offender is normally brought before the juvenile court by citation or certification from an inferior court. A substantial number of juvenile traffic offenders are handled by referees who have been appointed by judges of juvenile courts, these referees must certify their findings and recommendations to a juvenile court judge.[375]

There has been some criticism alleging a widespread lack of uniformity in the treatment of juvenile traffic violators.

This lack of uniformity has induced some judges to recommend that the traffic courts should be given compulsory jurisdiction over all juvenile traffic offenders rather than litigating traffic violations of the juvenile in juvenile court. Reasons advance are that juvenile traffic offenses usually involve no element of delinquency, and that the traffic courts have developed an expertise in the handling of the traffic violator, which the juvenile court does not usually possess.[376] Others have argued that such a jurisdictional grant would be contrary to the philosophy underlying the juvenile court system. They feel that traffic courts are not equipped to recognize the general behavior problems which initially become evident through traffic violations, whereas referees working under the juvenile court are so equipped. Those holding this view, further reason that the juvenile courts usually have available, experts in sociology and psychology trained to spot such problems and advise in their solution.[377] It has been suggested that a satisfactory compromise might be achieved by granting the traffic courts jurisdiction over ordinary juvenile traffic cases, while retaining in the juvenile court such offenses as reckless driving, drunk driving, and habitual violations which are particularly susceptible to the juvenile court's special techniques for handling minors.[378]

The question presented herein, is whether the traffic infraction of a juvenile could be adjudicated in conjunction with the California Model, and whether such adjudication would be violative of law or principle upon which the juvenile court system is formulated. It appears that adjudication of the juvenile violation within the California Model is not only possible, but also would answer much of the current criticism directed at the juvenile court system. The entire motivation for the administrative adjudication of traffic infractions reconciles with the rationale behind the juvenile court system. Neither adjudication method has, as its motivating force, the penalizing or punishing of the offender. The purpose of the traffic administrative adjudication system is not only to educate violators of a driving regulation, but also, for the safety and welfare of the driving public, and to rehabilitate drivers' skills. The juvenile court in effect aims at correcting the conduct of the juvenile in an attempt to rehabilitate the youthful offender. As presented above, critics argue that such offenses as reckless driving and drunk driving be retained in the juvenile court and that the other minor traffic offenses committed by the juvenile be resolved outside the juvenile court system. The administrative adjudication scheme would only litigate minor

traffic violations, and since violations such as reckless and drunk driving would be excluded from the category of minor traffic violations, these would remain subject to the jurisdiction of the juvenile court system, thereby satisfying both arguments advanced.

Litigating the rights of minors by administrative proceedings is prevalent in other areas of the law, welfare administrative hearings being a prime example. Therefore it would seem that no unique constitutional obstacles are presented by the mere fact that the rights of a minor are litigated in an administrative hearing rather than in the juvenile court system. In the case of Alice v. State Department of Social Welfare,[379] a minor female between the ages of 16 and 21, who was also unmarried and pregnant, litigated her right to welfare benefits in the normal welfare hearing system. The petitioner had been denied welfare assistance due to her alleged failure to meet her reporting responsibilities. This failure arose due to her refusal to give consent to the welfare department to enable them to make what was represented as "required contacts" with her parents. Her stated reason for such refusal was her desire to keep her expectant condition from her parents' knowledge. In granting petitioner's claim, the court dealt with it on its own merits, holding that the information provided was not incomplete, in that the minor could not be refused aid merely due to her refusal to consent to contact being made with her parents by the welfare authorities.[380] The importance of this case is that it demonstrates that a minor, in her own name and right, may litigate her rights in an administrative proceeding.

In conclusion it appears that there are no legal, or underlying public policy problems that would prevent the California Model from including the administrative adjudication of the rights of a juvenile concerning a minor traffic violation.

ANNEX II

IS THE EXEMPTION OF LEGISLATORS FROM "CIVIL PROCESS" SO BROAD AS TO INCLUDE THE ADMINISTRATIVE NOTICE TO APPEAR?

The question has been presented of whether the Constitutional exemption of legislators from "civil process" during a legislative term would exempt them from receiving an administrative notice to appear if found in violation of a traffic statute. The following discussion will examine the judicial and legislative construction of this exemption and set forth the premise that such exemption has been narrowly construed to apply only to "civil process" and would not, therefore, have the effect of exempting a legislator from receiving an administrative notice of a traffic violation.

As set forth in the California Constitution, a member of the Legislature is exempt from civil process while that body is in session.

> A member of the Legislature is not subject to civil process during a session of the Legislature or for five days before and after a session.[381]

It is interesting, and educational to note that the above section was added November 8, 1966. Prior to this time the legislator's exemption comprised Article IV §11 of the Constitution which verbalized the exemption in slightly different language:

> Members of the Legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for 15 days next before the commencement and after the termination of each session.

The present adaptation of the exemption, appears to clearly limit its applicability to "civil process". Even though the exemption prior to November of 1966, spoke in the context of "arrest", "and shall not be subject to any civil process,"[382] the courts held that this adaptation of the exemption also applied only to "civil process".[383] A California district court of appeal in In re Emmett,[384] after pointing out

that the California Constitutional Legislator exemption[385] is patterned after the exemption for United States Legislators[386] stated that "...the only difference in the two sections (comparing the California exemption with the Federal exemption) is that the members of the (state) legislature are exempt (only) from civil process." The court further reasoned that "...it was not the intent of the framers of the state Constitution to broaden the scope of the exemption (so as to include arrest in criminal cases)."[387]

It is apparent then, that as long as the traffic violation is defined as a crime, the legislator exemption does not apply. The question of exemption arises only upon the decriminalization of the traffic infraction as proposed by the administrative adjudication scheme. With the traffic violation not defined as a crime it is necessary to examine closely the "civil process", from which the legislators are exempted, in order to discover if this exemption is sufficiently broad to include the administrative notice to appear present in the administrative adjudication of traffic violations. The cases discussed above illustrate the concern of the courts that the legislators exemption from process, be strictly construed so as to only include "civil process". Process is defined in the Government Code as to include ". . . a writ or summons issued in the course of judicial proceedings of either a civil or criminal nature."[388] The code further defines "process" to include ". . . all writs, warrants, summons, and orders of courts of justice or judicial officers".[389]

The administrative adjudication scheme involves neither the "judiciary" or "civil process", but rather a "hearing officer" and "notice". Notice is also defined in the Government Code, and it is significant to note that such definition is identified separate from that of "process". "'Notice' includes all papers and orders required to be served in any proceedings before any court, board, or officer, or when required by law to be served independently of such proceeding."[390] Inasmuch as legislators are exempt only from "civil process"[391] and since the administrative adjudication process does not include "judiciary" or "process" which seem to be critical factors in the "civil process" exemption, it appears that the legislators would not be exempt from answering a notice to appear based on their exemption from "civil process". Even though, the question of whether the courts would extend the exception to administrative notice, has not been litigated, it appears that the literal language

of the exemption and definitions of "process" and "notice" support the conclusion that the legislators would not be exempt from the administrative notice to appear while the legislature is in session.

TABLE OF CASES

References as to Page Numbers

TABLE OF CONSTITUTIONAL PROVISIONS AND STATUTES

References as to Page Numbers

TABLE OF SECONDARY AUTHORITIES

References as to Page Numbers

Trumpets in the Corridors of Bureaucracy: A Coming Right To Appointed Counsel in Administrative Adjudication Proceedings, 18 U.C.L.A. L. REV. 758 (1970-71) p.22

WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE (3d ed. 1940) p.30, 32

WITKIN, CALIFORNIA EVIDENCE (2d ed. 1966) p. 29, 40

[1] See Sanctions, §II E infra; Judicial Review, §II F infra.

[2] CAL. VEH. CODE §40000.1.

[3] CAL. CONST. Art. I §13.

[4] CAL. PEN. CODE §1096.

[5] People v. Gale, 46 Cal. 2d 253, 294 P.2d 13 (1956); See generally 14 HAST. L. J. 459, 463 (1963). (Note: Search and Seizure Incident to Traffic Violations).

[6] Griffin v. California, 380 U.S. 609 (1965).

[7] CAL. PEN. CODE §19c.

[8] CAL. PEN. CODE §182.

[9] See People v. Wills, 23 Ill. App. 3d 25, 319 N.E. 2d 269 (1974) in which an Illinois Appellate Court overturned a statute granting the Parole and Pardon Board the power to extend beyond the maximum term imposed by the court in sentencing of any person whose parole had been revoked. The court held that the imposition of criminal sanctions such as incarceration was a judicial function and not delegable to administrative agencies. The decision is particularly significant inasmuch as the Illinois courts have proved generally permissive in allowing agencies to exercise adjudicative and sanctioning powers for offenses denominated as civil. See City of Waukegan v. Pollution Control Board, 57 Ill. 2d 170, 311 N.E. 2d 146 (1974). The inference lies that even in those states in which the courts tolerate the exercise of far-reaching adjudicative functions, the criminal offense remains exclusively within the domain of the courts. See also CAL. CONST. Art. I §15, which provides in part "the defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, . . ." The California Constitution clearly anticipates trial of criminal offenses in a court of law.

[10] The separation of powers doctrine is of course a two-edged sword and the courts would presumably be reluctant to challenge the Legislature's expressed will in this regard. As the California Supreme Court recently stated:

> The doctrine of separation of powers is firmly entrenched in the law of California, and a court should not lightly encroach on matters which are uniquely in the domain of the legislature.

> Perhaps the foremost among these are the definition of crime and the determination of punishment.

People v. Wingo, 14 Cal. 3d 169, 174, 121 Cal. Rptr. 97 102, 534 P.2d 1001, 1006 (1975); See also In re Lynch, 8 Cal. 3d 410, 105 Cal. Rptr. 217, 503 P.2d 921 (1973); People v. Lim, 18 Cal. 2d 872, 118 P.2d 472 (1941).

It follows that what the legislature defines as a crime it may un-define as well.

11 See In re Grand Jury, 468 F.2d 1368, (9th Cir. 1972) (right to appointed counsel in civil contempt proceeding based on witness's refusal to answer questions before a grand jury); Otton v. Zaborac, 525 P.2d 537 (Alaska 1974) (appointed counsel in non-support action) In re Harris, 69 Cal. 2d 486, 72 Cal. Rptr. 340, 446 P.2d 148 (1968) (appointed counsel in civil mesne process proceeding); People ex rel. Amendola v. Jackson, 74 Misc. 2d 797, 346 N.Y.S. 2d 353 (Sup. Ct. 1973) (appointed counsel in non-support action); Commonwealth v. Hendrick, 220 Pa. Super. 225, 283 A.2d 722 (1971) (appointed counsel in non-support action).

12 See Sanctions, §II E, infra.

13 "A fine may bear as heavily on an indigent accused as forced confinement. The collateral consequence of conviction may be even more serious as when (as was apparently a possibility in this case) the impecunious medical student finds himself barred from the practice of medicine because of a conviction he is unable to appeal for lack of funds." Mayer v. Chicago, 404 U.S. 189, 197 (1971).

14 Ready v. Grady, 243 Cal. App. 2d 113, 116, 52 Cal. Rptr. 303, 306 (1966); See also West Coast Home Improvement Co. v. Contractor's State License Bd, 72 Cal. App. 2d 287, 301, 164 P.2d 811, 819 (1945) (contractor's license revocation proceeding held designed to protect the public not punish the contractor); Bold v. Bd. of Medical Examiners, 135 Cal. App. 29, 35, 26 P.2d 707, 709 (1933) (medical license revocation proceedings held designed to protect the public). See generally In re Winne, 208 Cal. 35, 280 P. 113 (1929) (disbarment proceeding held not criminal in nature).

15 E. FISHER and R. REEDER, VEHICLE TRAFFIC LAW at 21 (Rev. ed. 1974) citing, Old Timers May Recall These Strict Laws, Popular Government, Vol. 22, No. 4 (Dec. 1955) at 1, 6, which credited their source to California Highways and

Public Works, the official journal of the California Department of Highways.

16 Id.; See generally E. FISHER and R. REEDER, VEHICLE TRAFFIC LAW (Rev. ed. 1974).

17 Escobedo v. California, 35 Cal. 2d 870, 876, 222 P.2d 1, 5 (1950).

18 Rollin Perkins in his definitive treatise on criminal law also suggests that traffic and motor vehicle laws be considered civil offenses and not true crimes. R. PERKINS, CRIMINAL LAW at 792 (2nd ed. 1969).

19 The peace officer's power over the uncooperative motorist would be maintained under the authority of Penal Code Section 148, which states that 'Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.' This provision would enable a peace officer to deal as effectively with motorists under the administrative adjudication process as he does under existing procedures. See Issuance of the Notice to Appear §II A(1) infra.

20 R. FORCE, Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers, 49 TUL. L. REV. 84, 123 (1974-75) [herinafter referred to as FORCE ON ADMINISTRATIVE ADJUDICATION].

21 397 U.S. 254 (1970).

22 Id. at 264, 271.

23 Id. at 263.

24 402 U.S. 535 (1971).

25 Id. at 539.

26 7 Cal. 3d 792, 103 Cal. Rptr. 299, 499 P.2d 979 (1973).

27 See Ratliff v. Lampton, 32 Cal. 2d 226, 195 P.2d 792 (1948). (The California Court discussed the situation where an opportunity for a hearing is provided on the condition of surrendering the license, and held that surrender of a license cannot be a condition to the opportunity to be heard.

Here the California DMV wished to suspend the petitioner's license since it had independently judged the petitioner incapable of safely operating his automobile due to his physical and emotional condition. He requested a hearing on this action, but the DMV demanded he surrender his license first before he would be given a hearing date. The court held that the DMV could not revoke his license without a hearing and thus, the petitioner did not have to surrender his license as a condition to be afforded a hearing. However, the court was not concerned with those situations which make revocation of a license mandatory subsequent to the petitioner being found guilty of certain traffic violations in a judicial setting. In such cases, the petitioner has had his hearing in the form of a criminal proceeding and has been given notice of the consequential sanction of the loss of his driving privilege.) People v. Emmanuel, 368 N.Y.S. 2d 773, 776 (1975) (the motorist was driving with a suspended license, however had not received notice of such suspension and therefore could not be guilty without notice of the charges and an opportunity to be heard, since the license, reasoned the court, is "not a gift or favor of the sovereign. It is a thing of real value which may not be taken away arbitrarily.").

28 Goldberg v. Kelly, 397 U.S. 254 (1970); Morrissey v. Brewer, 408 U.S. 471 (1972).

29 Wilson v. Porter, 361 F. 2d 412 (9th Cir. 1966); People v. Russell 259 Cal. App. 2d 637, 66 Cal. Rptr. 594 (1968). In Wilson, the court stated: "While it is clear that at the time appellee's car was pulled over probable cause for an arrest did not exist, it is also clear that not every time an officer sounds his siren or flashes a light to flag down a vehicle has an arrest been made. The initial act of stopping appellee's car was not an arrest." Wilson v. Porter, 361 F. 2d 412, 414-15 (9th Cir. 1966).

30 People v. Mitchell, 209 Cal. App. 2d 312, 26 Cal. Rptr. 89 (1962) (the court in this case found that the detention incidental to a custom's agent's search was not an arrest.).

31 Jones v. State of New York, 8 Misc. 2d 140, 167 N.Y.S. 2d 536 (1957).

32 Id. at 142, 167 N.Y.S. 2d at 538.

33 CAL. PEN. CODE §148.

34 Cole v. Arkansas, 333 U.S. 196 (1948); See also Smulson v. Bd. of Dental Examiners, 47 Cal. App. 2d 584, 118 P.2d 483 (1941).

35 See California Model of Administrative Adjudication of Traffic Infractions (Hereinafter referred to as the California Model).

36 Id.

37 Id.

38 Id.

39 McCullough v. Terzian, 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4 (1970).

40 397 U.S. 254 (1970).

41 See California Model.

42 See Brewer v. Municipal Court of East Los Angeles, 193 Cal. App. 2d 510, 14 Cal. Rptr. 391 (1961).

43 See In re Harris, 69 Cal. 2d 486, 72 Cal. Rptr. 340, 446 P.2d 148 (1968) (defendant arrested under a civil warrant based on an allegation of default of a contract, bail granted as a result of an order to show cause); 7 CAL.JUR. 2d 297 (Rev. ed. 1968) Bail and Recognizance.

44 242 Cal. App. 2d 845, 51 Cal. Rptr. 862 (1966).

45 See 12 STAN. L. REV. 388, 400 (1959-60) (California Traffic Law Administration).

46 In re Harris, 69 Cal. 2d 486, 72 Cal. Rptr. 340, 446 P.2d 148 (1968); In re Muller, 215 Cal. App. 2d 831, 30 Cal. Rptr. 633 (1963).

47 See Snidach v. Family Finance Corp., 395 U.S. 337, 342 (1969) (petitioner's wages had been garnished without having an opportunity to be heard on the issue which created the garnishment. The court held that "[w]here the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing this prejudgment garnishment procedure violates the fundamental principles of due process."); Goldberg v. Kelly, 397 U.S. 254, 262 (1970) (termination of welfare benefits prior to opportunity to have an evidentiary hearing. The court held that the informal review of the situation with the case-worker was not adequate, but that a full evidentiary hearing was necessary prior to termination, and that the constitutional challenge is not answered by attempting to distinguish welfare assistance as a privilege rather than a right, for relevant constitutional restraints apply to both.)

48 402 U.S. 535 (1971).

49 Id. at 539, 542.

50 Id. at 539-42.

51 Id. at 540.

52 See Goldberg v. Kelly, 397 U.S. 254 (1970); Snidach v. Family Finance Corp., 395 U.S. 337 (1969).

53 Bell v. Burson, 402 U.S. 535, 539-40 (1971).

54 U. S. CONST. Amend. VI; "The defendant in a criminal cause has the right to a speedy public trial . . ." CAL CONST. Art. I §15.

55 Smith v. Hooey, 393 U.S. 374 (1969) (by its own terms, applicable only to a criminal prosecution).

56 Steen v. City of Los Angeles, 31 Cal. 2d 542, 546-47, 190 P.2d 940 (1948). Where, in an action before the Board of Civil Service Commission of the City of Los Angeles, the court held that an action must be "diligently prosecuted". In so saying, the court stated that a proceeding before an administrative agency exercising quasi-judicial functions can be dismissed where an unreasonable time has elapsed and where the proceeding is not diligently prosecuted. The court further noted that an agency must expedite justice and avoid excessive delay.

57 McDonalds v. Bd. of Permit Appeals, 44 Cal. App. 3d 525, 119 Cal. Rptr. 26 (1975).

58 Id.

59 Hollon v. Pierce, 257 Cal. App. 2d 468, 474, 64 Cal. Rptr. 808 (1967) (school teacher complaint based on failure of school board to renew contract allegedly due to emotional instability on the part of the teacher. It should be noted that this factual situation would most likely allow a substantially longer period to elapse due to potential fact finding and investigation necessary on the part of the Commission than would not be allowed in the administrative adjudication of traffic violations.)

60 See 14 STAN. L. REV. 869 (1961-62) (New Remedy for Administrative Delay- Fourth Circuit Enjoins a Hearing).

61 See Pre-Hearing section on Notice, § II A(2).

62 2 K. DAVIS, ADMINISTRATIVE LAW TREATISE, §12.02, 12.03, at 146, 153 (1958 and 1970 Supp.) (Hereinafter referred to as DAVIS, ADMINISTRATIVE LAW TREATISE).

63 Training Manual for New Welfare Hearing Officers at 43, prepared for the Welfare Seminar, George Washington University, January 14-17, 1974, by the Center for Administrative Justice, American Bar Association, Washington, D. C.

64 "A hearing officer . . . shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing and conclusion," it also provides that parties can be disqualified for cause where the hearing officer may be partial . CAL. GOV'T. CODE §11512(c).

65 See Wong Yang Sung v. McGrath, 339 U.S. 33, 45-47 (1950) (impartiality is necessary in deportation hearings); Gibson v. Berryhill, 411 U.S. 564 (1973) (Board of Optometrists holding hearings possibly leading to revocation of licenses to practice optometry); 78 HARV. L. REV. 658 (1964-65) (analysis of Texico, Inc. v. FTC, 336 F. 2d 754 (D.C. Cir. 1964) FTC commissioner disqualified based on personal bias due to position taken and speeches in the recent past); 5 U. C. DAVIS L. REV. 45 (1972) (Countering prejudice in an Administrative Decision); 2 DAVIS, ADMINISTRATIVE LAW TREATISE, chap. 12 at 130, 1970 Supp. at 434 (Bias).

66 Ward v. Village of Monroeville, 409 U.S. 57 (1972).

67 Wong Yang Sung v. McGrath, 339 U.S. 33, 45-46 (1950) (speaking to the issue of whether the deportation hearings were subject to the requirements of the Administrative Procedure Act (emphasis added).

68 Murphy v. Bd. of Medical Examiners, 75 Cal. App. 2nd 161, 162-63, 170 P.2d 510, 511-12 (1946).

69 Perlman v. Shasta Joint Junior College District Board of Trustees, 9 Cal. App. 3d 873, 883, 88 Cal. Rptr. 563, 570 (1970).

70 See Gibson v. Berryhill, 411 U.S. 564, 579-81 (1973) (Board of Optometry comprised of optometrists in private practice, hearing claims against company optometrists, in whose adjudication the board members had "substantial pecuniary interest"); 2 DAVIS, ADMINISTRATIVE LAW TREATISE, §12.03 at 153, 1970 Supp. at 438.

71 See California Model.

72 CAL. VEH. CODE §14100 et seq.; See CAL. VEH. CODE §13353 (implied consent hearing).

73 "Any formal hearings shall be conducted by the director or by a referee or hearing board appointed by him from officers or employees of the department." CAL. VEH. CODE §14107.

74 CAL. GOV'T CODE §11500 et seq.

75 CAL. GOV'T CODE §11501.

76 CAL. GOV'T CODE §11502.

77 "All matters in a formal hearing not covered by this chapter shall be governed, as far as applicable, by the provisions of the Government Code relating to administrative hearings [CAL. GOV'T CODE §11500 et seq.] . . ." CAL. VEH. CODE §14112.

78 See CAL. VEH. CODE §14107.

79 See CAL. VEH. CODE §14112.

80 See 1 F. COOPER, STATE ADMINISTRATIVE LAW, 332 (1965) (hearing officers) (Hereinafter referred to as COOPER, STATE ADMINISTRATIVE LAW); 2 DAVIS, ADMINISTRATIVE LAW TREATISE, §10.01 at 1, 1970 Supp. at 407.

81 CAL. GOV'T CODE §11501.

82 Tenth Biennial Report, Judicial Council of California to the Governor and the Legislature, December 31, 1944, as reported in, CALIFORNIA JUDICIAL COUNCIL REPORTS 6-10 (1934-44).

83 Hohreiter v. Garrison, 81 Cal. App. 2d 384, 397, 184 P.2d 323, 331 (1947).

84 CALIFORNIA JUDICIAL COUNCIL REPORTS at 13.

85 Id. at 14.

86 Id. at 19.

87 Id. at 56.

88 See 1 COOPER, STATE ADMINISTRATIVE LAW, at 332; 2 DAVIS, ADMINISTRATIVE LAW TREATISE, §10.01 at 1, 1970 Supp. at 407.

89 "His sole power is to determine legal questions that may arise upon the offer of or objection to evidence or that might otherwise arise in the conduct of the board's business. * * * By reason of the important if not paramount interests delegated to the administrative tribunal the participation of a lawyer in its deliberations as well as in the conduct of its affairs would appear indispensable. Such necessity was impressed upon the Legislature as a means not only of preventing injustices but also of lessening the burdens cast upon the courts in reviewing the proceedings of administrative boards." Bartosh v. Bd. of Osteopathic Examiners 82 Cal. App. 2d 486, 492, 186 P.2d 984, 987, (1947).

90 Stoetzner v. Los Angeles, 170 Cal. App. 2d 394, 338 P.2d 971 (1959).

91 263 Cal. App. 2d 682, 70 Cal. Rptr. 1 (1968).

92 Reirdon v. Director, DMV, 266 Cal. App. 2d 808, 72 Cal. Rptr. 614 (1968), DMV v. Superior Court, 271 Cal. App. 2d 770, 76 Cal. Rptr. 804 (1969), Funke v. DMV, 1 Cal. App. 3d 449, 81 Cal. Rptr. 662 (1969), Lacy v. Orr, 276 Cal. App. 2d 198, 81 Cal. Rptr. 276 (1969), Noll v. DMV, 273 Cal. App. 2d 407, 78 Cal. Rptr. 236 (1969), Spurlock v. DMV, 1 Cal. App. 3d 821, 82 Cal. Rptr. 42 (1969), Walker v. DMV 274 Cal. App. 2d 793, 79 Cal. Rptr. 433 (1969). (All of these cases deal with implied consent hearings.)

93 CAL. GOV'T CODE §11501.

94 CAL. VEH. CODE §14100 et seq.

95 CAL. GOV'T CODE §11500 et seq.

96 Serenko v. Bright, 263 Cal. App. 2d 682, 689-90, 70 Cal. Rptr. 1, 6 (1968).

97 Id. at 690, 70 Cal. Rptr. at 6-7.

98 ". . . [T]here are in addition to courts certain boards and special tribunals for determining certain classes of rights; and while they are not strictly courts, they partake of their nature, and their findings partake of the nature of judgments. * * * Learning in the law is not one of the qualifications required of the members composing the board; and to hold under these circumstances that the board's investigations should be conducted according to technical legal rules would have the effect of seriously impairing the successful performance of the duties for which that body was created." Id.at 690-91, 70 Cal. Rptr. at 7, quoting Anderson v. Bd. of Dental Examiners of California, 27 Cal. App. 336,339-40, 149 P.1006, 1008 (1915).

99 Supra n. 63.

100 Id. at 43.

101 Goldberg v. Kelly, 397 U.S. 254, 267 (1970), quoting Grannis v. Ordean, 234 U.S. 385, 394 (1914).

102 See Washington v. Texas, 388 U.S. 14, 19 (1967) (accused has the right to a hearing with an opportunity to be heard); McCullough v. Terzian, 2 Cal. 3d 647, 654, 87 Cal. Rptr. 195, 200, 470 P.2d 4, 8 (1970) (hearing required prior to termination of welfare benefits, with the right to present evidence, and confront and cross-examine witnesses); Rios v. Cozens, 7 Cal. 3d 792, 796, 103 Cal. Rptr. 299, 301, 499 P.2d 979, 983 (1972) (a hearing required prior to revoking a driver's license, implying all requirements provided by a formal hearing).

103 See 1 DAVIS, ADMINISTRATIVE LAW TREATISE, §7.07 at 432, 1970 Supp. at 330.

104 Santa Clara County v. Southern Pacific Railroad, 118 U.S. 394, 396 (1886) (the court chose not to hear argument on the issue in question).

105 Londover v. Denver, 210 U.S. 373, 386 (1908); See DAVIS, ADMINISTRATIVE LAW TREATISE, Vol. 1, §7.07 at 432, 1970 Supp. at 330.

106 Rios v. Cozens, 7 Cal. 3d 793, 796, 103 Cal. Rptr. 299, 301, 499 P.2d 979, 983 (1972).

107 CAL. VEH. CODE §§14107, 14108.

108 "At any formal hearing the department shall consider . . . and may receive . . ." CAL. VEH. CODE §14108.

109 "All matters in a formal hearing not governed by this chapter shall be governed [by the Administrative Procedure Act (CAL. GOV'T CODE §11500 et seq.)]" CAL. VEH. CODE §14112.

110 CAL. GOV'T CODE §11500 et seq.

111 CAL. GOV'T CODE §11513(a) and (b).

112 See Notice §II A(2) infra.; McCullough v. Terzian, 2 Cal. 3d 647, 654, 87 Cal. Rptr. 1965, 200, 470 P.2d 4, 8 (1970).

113 See McCullough v. Terzian, 2 Cal. 3d 647, 654, 87 Cal. Rptr. 195, 200, 470 P.2d 4, 8 (1970); Confrontation and Cross-Examination §II C(4) infra.

114 397 U.S. 254 (1970).

115 Id.at 270, quoting Greene v. McElroy, 360 U.S. 474, 496-497 (1959).

116 Id. at 267.

117 CAL. GOV'T CODE §11501.

118 CAL. VEH. CODE §§14107, 14108; See CAL. VEH. CODE §14112.

119 See CAL. GOV'T CODE §11504 et seq.

120 See CAL. GOV'T CODE §11513.

121 In re Oliver, 333 U.S. 257 (1948), (an individual testifying before a grand jury, must have the opportunity to obtain counsel for the hearing); McCullough v. Terzian, 2 Cal. 3d 647, 654, 87 Cal. Rptr. 195, 200, 470 P.2d 4, 8 (1970), (welfare recipient has the right to retain counsel of choice for a welfare hearing); CAL. GOV'T CODE §11509 (". . . may be, but need not be represented by counsel").

122 372 U.S. 335 (1963).

123 See 18 U.C.L.A. L. REV. 758 (1970-71), (Trumpets in the Corridors of Bureaucracy: A coming Right to Appointed Counsel in Administrative Adjudication Proceedings); 84 HARV. L. REV. 1026 (1970-71) (indigent respondent, before Federal Trade Commission Proceeding, to be furnished legal counsel.)

124 United States ex. rel. Castro-Louzan v. Zimmerman, 94 F. Supp. 22, 25-26, (E.D. Pa. 1950) (non-English speaking alien in a deportation hearing with "$30 to his name" being a stranger in the land", did not receive a fair hearing since he was not represented, even though given the opportunity to secure his own counsel).

125 Id.

126 397 U.S. 254 (1970).

127 Id. at 270; See Argersinger v. Hamlin, 407 U.S. 25 (1972) (the court stated that there is no right to court appointed counsel in a proceeding which precludes incarceration as a form of sanction); Staley v. Unemployment Insurance Appeals Bd., 6 Cal. App. 3d 675, 86 Cal. Rptr. 294 (1970) (reiterating the view that there is not a right to appointed counsel in an administrative hearing).

128 Borror v. Dept. of Investment, 15 Cal. App. 3d 531, 92 Cal. Rptr. 525 (1971).

129 Id. at 543, 92 Cal. Rptr. at 530.

130 Id.

131 McCullough v. Terzian, 2 Cal. 3d 647, 654, 87 Cal. Rptr. 195, 200, 470 P.2d 4, 8 (1970).

132 See English v. Long Beach, 35 Cal. 2d 155, 159, 217 P.2d 22, 24, (1950) (dismissal of policeman due to physical inability to perform duties. After addressing itself to certain necessary evidentiary safeguards, the court stated"[n]one of those safeguards are available, however, when the board secretly obtains information and bases its determination thereon."); Willner v. Committee, 373 U.S. 96 (1963) (the due process of law protections are violated by denial of admission to the bar based on exparte statements); 68 HARV. L. REV. 363 (1954-55) (Hearing Officer's report to deciding officer must be revealed to licensee in state suspension proceedings); C.PECK, Regulation and Control of Ex Parte Communications with Administrative Agencies, 76 HARV. L. REV. 233 (1962-63); 1 DAVIS ADMINISTRATIVE LAW TREATISE, §7.05 at 426, 1970 Supp. at 324 (The Need for Confrontation).

133 397 U.S. 254 (1970).

134 Id. at 269.

135 Id. at 270, quoting Greene v. McElroy, 360 U.S. 474, 496-97 (1959).

136 Rios v. Cozens, 7 Cal. 3d 792, 103 Cal. Rptr. 299, 499 P.2d 979 (1972).

137 Id. at 796, 103 Cal. Rptr. at 301, 499 P.2d at 983.

138 Apparently mandated by the Administrative Procedure Act (A.P.A.) CAL. GOV"T CODE §11513(b), which is invoked since the Vehicle Code is silent as to the specific due process requirements of a formal hearing, See CAL. VEH. CODE §§14107,14108, and when silent the A.P.A. becomes applicable, See CAL. VEH. CODE §14112.

139 See California Model.

140 Boykin v. Alabama, 395 U.S. 238 (1969).

141 Id. at 243.

142 In re Tahl, 1 Cal. 3d 122, 81 Cal. Rptr. 577, 460 P.2d 449 (1969).

143 Id. at 129, 81 Cal. Rptr. at 581, 460 P.2d at 455.

144 Id. at 130, 81 Cal. Rptr. at 582, 460 P.2d at 455 (emphasis added).

145 Id. at 132, 81 Cal. Rptr. at 584, 460 P.2d at 456.

146 Boykin v. Alabama, 395 U.S. 238 (1969); In re Tahl, 1 Cal. 3d 122, 81 Cal. Rptr. 577, 460 P.2d 449 (1969).

147 See California Model.

148 380 U.S. 609 (1965).

149 See Cohen v. Hurley, 366 U.S. 117 (1961).

150 385 U.S. 511, 514 (1967).

151 CAL. EVIDENCE CODE §300.

152 "Except as otherwise provided by statute the provisions of this division [Privileges] apply in all proceedings. The provisions of any statute making rules of evidence inapplicable in particular proceedings, or limiting the applicability of rules of evidence in particular proceedings, do not make this division inapplicable to such proceedings." CAL. EVIDENCE CODE §910; "Proceedings" include any hearing, CAL. EVIDENCE CODE §901; The Privilege against self-incrimination is included in the same division and is thereby afforded in administrative hearings. See CAL. EVIDENCE CODE §940.

153 47 Cal. 2d 494, 304 P.2d 1015 (1956).

154 385 U.S. 511 (1967).

155 Id. at 515.

156 264 Cal. App. 2d 268, 70 Cal. Rptr. 447 (1968).

157 15 Cal. App. 3d 531, 92 Cal. Rptr. 525 (1971).

158 Id. at 542, 92 Cal. Rptr. at 531, citing Spevack v. Klein, 385 U.S. 511, 514 (1967).

159 See People v. Snyder, 50 Cal. 2d 190, 197, 324, P.2d 1, 6 (1958) ("no implication of guilt can be drawn from a defendant's r ying on the consitutional guarantees of [the privile gainst self-incrimination]"). People v. Sharer, 61 (2d 869, 40 Cal. Rptr. 851, 395 P.2d 899 (1964) (in which the use of evidence in court that the

defendant asserted the privilege against self-incrimination in a grand jury proceeding was held to be prejudicial error in that an inference was drawn by the finder of fact).

160 "If weaker and less satisfactory evidence is offered while it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust". CAL.EVIDENCE CODE §412.

161 " . . .[T]he trier of fact may consider, among other things, the party's failure to explain or deny by his testimony such evidence or facts in the case against him, or his willful supression of evidence relating thereto, if such be the case". CAL.EVIDENCE CODE §413.

162 Division 8 CAL. EVIDENCE CODE §900 et seq.

163 CAL. EVIDENCE CODE §910.

164 Privilege against self-incrimination, CAL. EVIDENCE CODE §940; Lawyer-client privilege, §950; Privilege not to testify against spouse, §970; Privilege for Confidential Marital Communications §980; Physician-Patient Privilege, §990; Psycotherapist-Patient Privilege; §1010; and, Clergyman-Penitent Privileges, §1030.

165 "Reference to privileged communication . . . is excluded from the hearing". California Model.

166 B. WITKIN, CALIFORNIA EVIDENCE §21 at 22 (2d ed. 1966).

167 "The provisions of the code do not apply in administrative proceedings, legislative hearings, or any other proceedings unless some statute so provides or the agency concerned chooses to apply them." CAL. EVIDENCE CODE §300, Comment.

168 The Board or its referee" . . . shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. CAL. LABOR CODE §5708. See also Western Pipe Steel Co. v. Ind. Acc. Comm.,194 Cal. 379, 381, 228 P.859, 860 (1924); Sada v. Ind. Acc. Comm., 11 Cal. 263, 268, 78 P.2d 1127, 1128 (1938).

169 CAL. PUB. UTIL. CODE §1701(" . . . [T]he technical rules of evidence need not be applied").

170 Big Boy Liquors Ltd. v. Alcoholic Beverage Control Appeals Bd., 71 Cal. 2d 1226, 1230, 81 Cal. Rptr. 258, 263, 459 P.2d 674, 677 (1968); See CAL. GOV'T CODE §11513 (c).

171 " . . . [A]n administrative board . . . is not limited by the strict rules applicable to trials of criminal cases." Tobinski v. Bd. of Medical Examiners, 49 Cal. App. 2d 591, 594, 121 P.2d 861, 862 (1942) (revocation of license to practice medicine); "As to the claim this board based its decision solely upon improper evidence which it admitted, it may be said... that proceedings of this character are not governed by the strict rules of evidence or procedure that obtain in trial courts." Traxler v. Bd. of Medical Examiners, 135 Cal. App. 37, 40, 26 P.2d 710, 712 (1933) (medical license). Accord, Suckow v. Alderson, 182 Cal. 247, 187, P.965 (1920); Lanterman v. Anderson, 36 Cal. App. 472, 172 P.625 (1918).

172 Whitlow v. Bd. of Medical Examiners, 248 Cal. App. 2d 478, 488,56 Cal. Rptr. 525, 533 (1967).

173 See Anderson v. Bd. of Dental Examiners, 27 Cal. App. 336, 149 P.1006 (1915).

174 55 HARV. L. REV. 364, 365 (1941-42) (An Approach to Problems of Evidence in the Administrative Process).

175 J. WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE, Vol. I, §8(c) 259, 260 (3d ed. 1940) (hereinafter referred to as WIGMORE, EVIDENCE).

176 See 41 HARV. L. REV. 909 (1928) (Method of proof in hearings of motions for temporary injunctions in the Federal Courts.)

177 55 HARV. L. REV. 364, supra n. 174, at 387.

178 37 Cal. App. 3d 987, 112 Cal. Rptr. 827 (1974).

179 Id.at 995, 112 Cal. Rptr. at 832; Accord,So. Cal. Jockey Club v. Cal. etc. Racing Bd., 36 Cal. 2d 167, 223 P.2d 1 (1950); Kirby v. Alcoholic Bev. etc. Appeals Bd., 8 Cal. App. 3d 1009, 87 Cal. Rptr. 908 (1970).

180 Anderson v. Bd. of Dental Examiners, 27 Cal. App. 336, 339, 149 P.1006, 1008 (1915).

181 I WIGMORE, EVIDENCE §4(b) at 36.

182 397 U.S. 254 (1970).

183 This conclusion is by implication since the court made it clear that the "hearing" at issue was only the "pre-termination" hearing, and that one "bear in mind that the statutory 'fair hearing' will provide the recipient with a full administrative review," thereby requiring "a complete record and a comprehensive opinion,...(for) judicial review." Id. at 266-67.

184 McCullough v. Terzian, 2 Cal. 3d 647, 654, 87 Cal. Rptr. 195, 200, 470 P.2d 4, 8 (1970). ("A complete record and comprehensive opinion, which would serve primarily to facilitate judicial review and guide future decisions need not be provided at the pre-termination stage.")

185 Bostick v. Sadler, 247 Cal. App. 2d 179, 55 Cal. Rptr. 322 (1966) (Savings and Loan license).

186 Id. at 186-87, 55 Cal. Rptr. at 327, citing California Motor Transport Co. v. Public Utilities Comm., 59 Cal. 2d 270, 274-75, 28 Cal. Rptr. 868, 871, 379 P.2d 324, 327 (1963).

187 See CAL. GOV'T CODE §11512(d) (Tape recording used as the record in hearing subject to the Administrative Procedure Act); CAL. WELF. & INST. CODE §10956 (tape recording will comprise the record in a welfare hearing); CAL. VEH. CODE §14107 (any recording device capable of reproduction or transcription is sufficient in a DMV hearing), CAL. PEN. CODE §6028.1 (tape recording is the record in administrative hearings before the Board of Corrections in the State Correction System); Henderling v. Carleson, 36 Cal. App. 3d 561, 566, 111 Cal. Rptr. 612, 616 (1974) (welfare hearing); Funk v. DMV, 1 Cal. App. 3d 449, 81 Cal. Rptr. 662 (1969) (DMV hearing).

188 "Crimes and Public Offenses include: 1. Felonies; 2. Misdemeanors; and 3. Infractions" CAL. PENAL CODE §16.

189 People v. Oppenheimer, 42 Cal. App. 3d Supp. 4, 116 Cal. Rptr. 795 (1974) (Appeal from a conviction of running a red light).

190 A violation of the provisions of Article I of Chapter I of Division 17 of the California Vehicle Code (§§40000 - 40005 of which §40000.1 therein sets forth infractions) is criminal in nature, Id.at 7, 116 Cal. Rptr. 797.

191 CAL. VEH. CODE §40000.1.

192 42 Cal. App. 3d Supp. 4, 116 Cal. Rptr. 795 (1974).

193 Id.at Supp. 7, 116 Cal. Rptr. at 797.

194 "A defendant in a criminal action is presumed to be innocent until the contrary is proved . . . beyond a reasonable doubt." CAL. PENAL CODE §1096.

195 In dealing with §1096 of the CAL. PENAL CODE it has been held that: "The presumption of innocence and the obligation of the State to prove guilt beyond a reasonable doubt are fundamental concepts in our system of criminal justice." People v. Rusling, 268 Cal. App. 2d 930, 938, 74 Cal. Rptr. 418, 423 (1968) (concerning conviction for the sale of marijuana and dangerous drugs); ". . . [T]he defendant [in a criminal action] is presumed to be innocent and the prosecution has the burden of proving his guilt beyond a reasonable doubt." People v. loggins, 2b Cal. App. 3d 597, 600-601, 100 Cal. Rptr. 528, 530 (1972) (dealing with an appeal of a conviction of manslaughter).

196 CAL. PENAL CODE §16.

197 See CAL. VEH. CODE §40000.1; People v. Oppenheimer, 42 Cal. App. 3d Supp. 4, 7, 116 Cal. Rptr. 795, 797 (1974).

198 CAL. PENAL CODE §1096.

199 People v. Rusling, 268 Cal. App. 2d 930, 938, 74 Cal. Rptr. 418, 423 (1968); People v. Loggins, 23 Cal. App. 3d 597, 600-601, 100 Cal. Rptr. 528, 530 (1972).

200 It is important to note that the above statutory alterations are within the exclusive domain of the Legislature (as discussed in the section on Separation of Powers, infra.at §I.) ". . .[A] court should not lightly encroach on matters which are uniquely in the domain of the Legislature. Perhaps foremost among these are the definition of crime and the determination of punishment . . ." People v. Wingo, 14 Cal. 3d 169, 174, 121 Cal. Rptr. 97, 102, 534 P.2d 1001, 1006 (1975), See also In re Lynch, 8 Cal. 3d 410, 105 Cal. Rptr. 217, 503 P.2d 921 (1973); People v. Lim, 18 Cal. 2d 872, 118 P.2d 472 (1941). The converse is also true, that is, where the Legislature has not seen fit to declare certain conduct to be criminal, the Judiciary may not do so; "It is not the function of the courts under the guise of interpretation, to make an act a crime when it has not been so classified or defined by the Legislature." People v. Redmond, 246 Cal. App 2d 852, 862, 55 Cal. Rptr. 195, 202 (1967); concerning the "Function of the Court" as used in this context, See also In re Young, 32 Cal. App. 3d 68, 107, Cal. Rptr. 915 (1973). Therefore, the Legislature, if it so chooses, can alter the statutory context of infractions by using, ". . . broad discretion . . .[but the resultant or new] scheme must be a rational one, reflecting that sense of balance and proportion

which is the essence of justice." People v. Thomas, 116 Cal. Rptr. 393, 401 (1974). So long as the Legislature's actions are rational and in the interest of justice, the courts may not thereafter nullify the amended statute merely because the court might deem the statute in its amended form to be unwise. People v. Knowles, 35 Cal. 2d 175, 217 P.2d 1 (1950).

201 36 N.Y. 2d 269, 367 N.Y.S. 2d 247, 326 N.E. 2d 811 (1975).

202 Id. at 272, 367 N.Y.S. 2d at 249, 326 N.E. 2d at 813.

203 Id. at 273-74, 367 N.Y.S. 2d at 250, 326 N.E. 2d at 814.

204 See People v. Phinney, 22 N.Y. 2d 288, 292 N.Y.S. 2d 632, 239 N.E. 2d 515 (1968); People v. Hildebrandt, 308 N.Y. 397, 126 N.E. 2d 377 (1955); People v. Firth, 3 N.Y. 2d 472, 168 N.Y.S. 2d 949, 146 N.E. 2d 682 (1957).

205 People v. Phinney, 22 N.Y. 2d 288, 290, 292, N.Y.S. 2d 632, 634, 239 N.E. 2d 515, 516 (1968).

206 "'Statement of findings and purpose. The Legislature hereby finds that the incidence of crime in the larger cities of this State has placed an overwhelming burden upon the criminal courts thereof. This burden, when coupled with the responsibility for adjudicating such non-criminal offenses as traffic infractions, has resulted in a situation in which the prompt and judicious handling of cases becomes virtually impossible. Despite the efforts of all concerned, this situation has often resulted in the lengthy incarceration of defendants before trial and the inability to grant a trial date for periods of up to one year and longer. Because the injustices resulting from the present system cannot be corrected unless the workload of the criminal courts is substantially reduced, the legislature finds that it is necessary and desirable to establish a system for the administrative adjudication of traffic infractions in cities having a population of one million or more. Such a system will not only contribute to the more judicious disposition of criminal matters, by reducing the overwhelming workload of the criminal courts, but will also provide for the speedy and equitable disposition of charges which allege moving traffic violations.'" Rosenthal v. Hartnett, 36 N.Y. 2d 269, 273, 367 N.Y.S. 2d 247, 249, 326 N.E. 2d 811, 813 (1975), quoting Law 1969, Chapter 1074, §1.

207 15 Cal. App. 3d 531, 92 Cal. Rptr. 525 (1971).

208 Id. at 540, 92 Cal. Rptr. at 529.

209 ". . . [I]n recent times the growing awareness of individual rights which are constitutionally protected has eroded the traditional distinctions made upon the basis that an administrative proceeding is a 'civil' action and consequently not governed by legal doctrine in the criminal law area. * * */The recent trend has not necessarily obliterated the distinction between an administrative and a criminal proceeding but has restricted itself to the application of the criminal law analogy in the area of administrative process where such process can result in the deprivation of liberty, property or property rights and where the proceeding bears a close identity to the aims and objectives of criminal law enforcement." Id. at 542, 92 Cal. Rptr. at 531 (Emphasis added.).

210 See Webster v. Bd. of Dental Examiners, 17 Cal. 2d 534, 538, 110 P.2d 992, 995 (1940) (revocation of a license to practice dentistry, in which the court stated that ". . . the overwhelming weight of authority has rejected [arguments requiring a license to be revoked] in accordance with theories developed in the field of criminal law"; Murphy v. Bd. of Medical Examiners, 75 Cal. App. 2d 161, 166-67, 170 P.2d 510, 514 (1946) (revocation of medical license due to performance of illegal abortions. Even though criminal charges could be brought, this was an administrative proceeding, thus the degree of proof required is not mandated by ". . . criminal cases involving charges of abortion"); Kendall v. Bd. of Osteopathic Examiners, 105 Cal. App. 2d 239, 233 P.2d 107 (1951) (license revocation due to performance of illegal abortions); Cornell v. Reilly, 127 Cal. App. 2d 178, 184, 273 P.2d 572, 576 (1954) (revocation of liquor license due to illegal employment of girls to encourage purchase of alcohol. The court held that, "guilt must be established to a reasonable certainty . . ." in administrative hearings and are not governed by the law applicable to criminal cases.); Penaat v. Zeiss, 97 Cal. App. 2d 909, 911, 219 P.2d 60, 61 (1950) (violation of the Business and Professions Code. The court simply stated that ". . . the rules governing due process in criminal proceedings do not apply.").

211 177 Cal. App. 2d 440, 2 Cal. Rptr. 235 (1960).

212 Id. at 445, 2 Cal. Rptr. at 238.

213 180 Cal. App. 2d 200, 4 Cal. Rptr. 396 (1960).

214 Id.at 210, 4 Cal. Rptr. at 403.

215 263 Cal. App. 2d 682, 70 Cal. Rptr. 1 (1968).

216 Id. at 691, 70 Cal. Rptr. at 7.

217 1 Cal. App. 3d 807, 82 Cal. Rptr. 330 (1969).

218 15 Cal. App. 3d 47, 92 Cal. Rptr. 746 (1971).

219 32 Cal. App. 3d 332, 108 Cal. Rptr. 167 (1973).

220 16 Cal. App. 3d 450, 94 Cal. Rptr. 135 (1971).

221 32 Cal. App. 3d 204, 108 Cal. Rptr. 71 (1973).

222 Small v. Smith, 16 Cal. App. 3d 450, 457, 94 Cal. Rptr. 136, 140 (1971); Realty Projects v. Smith, 32 Cal. App. 3d 204, 212, 108 Cal. Rptr. 71, 77 (1973).

223 See M. NESTLE, J. BRECHER, S. MIKELS, CALIFORNIA ADMINSTRATIVE AGENCY PRACTICE, §3.26 at 158-60 (1970).

224 CAL. GOV'T CODE §11513(c); See also Sunseri v. Bd. of Medical Examiners, 224 Cal. App. 2d 309, 316, 36 Cal. Rptr. 553, 558 (1964).

225 Walker v. San Gabriel, 20 Cal. 2d 879, 881, 129 P.2d 349, 351 (1942).

226 Fox v. San Francisco Unified School District, 111 Cal. App. 2d 885, 891, 245 P.2d 603, 608 (1952).

227 2 CAL. JUR. 2d §147 at 251-52.

228 20 Cal. 879, 129 P.2d 349 (1942).

229 Id. at 882, 129 P.2d at 351.

230 Id.quoting Colsolidated Edison Co. v. National Labor Relations Bd., 305 U.S. 197, 230 (1938).

231 Id.at 882, 129 P.2d at 351 (concurring opinion).

232 CAL. GOV'T CODE §11500 et seq.

233 26 Cal. App. 3d 573, 583-84, 103 Cal. Rptr. 306, 313(1972).

234 CAL. GOV'T CODE §11513, which sets forth the A.P.A. position on hearsay evidence.

235 6 Cal. 3d 205, 210 n.2, 98 Cal. Rptr. 467, 470 n.2, 490 P.2d 1155,1158 n.2 (1971).

236 B. WITKIN, CALIFORNIA EVIDENCE §30 at 31 (2d ed. 1966).

237 111 Cal. App. 2d 885, 245 P.2d 603 (1952).

238 Id. at 891, 245 P.2d at 608.

239 " . . . [O]pinion evidence . . . from a reliable source . . . is substantial itself even if it constitutes but the only evidence. . . .The fact that such evidence is hearsay does not dinimish the propriety . . . of such evidence . . .[or] its probative value." Goldberg v. Barger, 37 Cal. App. 3d 987, 995, 112 Cal. Rptr. 827, 832 (1974); accord, So. Cal. Jockey Club v. Cal. etc., Racing Bd., 36 Cal. 2d 167, 223, P.2d 1 (1950); Kirby v. Alcoholic Beverage, etc. Appeals Bd.8 Cal. App. 3d 1009, 87 Cal. Rptr. 908 (1970).

240 K. DAVIS, Hearsay in Administrative Hearings, 32 GEO. WASH. L. REV. 689 (1964).

241 See E. CLEARY, McCORMICK'S HANDBOOK ON THE LAW OF EVIDENCE, §245 at 581 et seq. (2d ed. 1972) (hereinafter referred to as McCORMICK ON EVIDENCE).

242 Id. at 582.

243 "'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." CAL. EVID. CODE §1200(a).

244 CAL. EVID. CODE §1270 et seq..

245 CAL. EVID. CODE §1271; See McCORMICK ON EVIDENCE §304 et seq. at 717-30.

246 See California Model.

247 See CAL. EVIDENCE CODE §1280, requiring that the entry be made, (a) by and in the scope of duty of a public employee, (b) at or near the time of the event, and (c) the sources of information and method and time of preparation were such as to indicate its trustworthiness.

248 See McCORMICK ON EVIDENCE §245 at 583.

249 See I COOPER, STATE ADMINISTRATIVE LAW at 375.

250 111 Cal. App. 2d 885, 245 P.2d 603 (1952).

251 37 Cal. App. 3d 987, 112 Cal. Rptr. 827 (1974).

252 See California Model.

253 397 U.S. 254 (1970).

254 Id.at 271.

255 McCullough v. Terzian, 2 Cal. 3d 647, 87, Cal. Rptr. 195, 470, P.2d 4 (1970).

256 Id.at 654, 87 Cal. Rptr. at 200, 470 P.2d at 8.

257 Bostick v. Sadler, 247 Cal. App. 2d 179, 55 Cal. Rptr. 332 (1966).

258 Id.at 186-87, 55 Cal. Rptr. 327, citing California Motor Transport Co. v. Public Utilities Comm. 59 Cal. 2d 270, 274-75, 28 Cal. Rptr. 868, 871, 379 P.2d 324, 327 (1963).

259 "The decision shall be in writing and shall contain findings of fact and shall specify a determination of the issues presented and the penalty, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be delivered to the parties . . ." CAL. GOV'T CODE §11518.

260 "Upon the conclusion of a formal hearing, the referee or board shall make findings on the matters under consideration and may prepare and submit recommendations to the director." CAL. VEH. CODE §14109.

261 See California Model

262 The hearing officer "shall prepare a proposed decision in such form that it may be adopted as the decision in the case . . . the agency may adopt the proposed decision in its entirety" or take other steps to finally decide the issue. CAL. GOV'T CODE §11517(b) (hearings subject to the A.P.A.); "the referee shall make findings . . . and may prepare and submit recommendations to the director . . ." CAL. VEH. CODE §14109. The director [or designate] . . . shall render his decision . . ." CAL. VEH. CODE §14110 (DMV hearings); the referee "shall prepare a proposed decision" and submit it to the

director, CAL. WELF. & INST. CODE §10958, "after receiving a copy of the referee's proposed decision, the director may adopt the decision", or take other steps to decide the issue, CAL. WELF. & INST. CODE §10959 (welfare hearings).

263 In both A.P.A. and non-A.P.A. cases the decision must be made by the agency or person in whom the law vests the power of decision. Normally, the power of decision is statutorily vested in the head of the agency or in a multi-member board or commission. Generally, powers conferred upon public agencies and officers involving exercise of judgment or discretion are in the nature of a public trust and cannot be surrendered or delegated to subordinates in the absence of specific statutory authorization. California School Employees Assoc. v. Personnel Commission of P.V.U.S.D., 3 Cal. 3d 139, 144, 89 Cal. Rptr. 620, 623, 474 P.2d 436, 439 (1970). Inasmuch as the California administrative adjudication model calls for delegation, of both the power to hear and the power to decide, to the hearing officer, such delegation must be of statutory origin.

264 "'Writing' means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing, any form of communications or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof." The comment continues by stating that, "'[w]riting' is defined very broadly to include all forms of tangible expression, including pictures and sound recordings." CAL. EVIDENCE CODE §250.

265 See People v. Wills, 23 Ill. App. 3d 25, 319 N.E. 20, 269 (1974). 1 DAVIS, ADMINISTRATIVE LAW TREATISE, §2.13 at 133-38.

266 See CAL. VEH. CODE §42001 (fines and penalties); §13200 et seq. (suspension and revocation of licenses).

267 Suckow v. Alderson, 182 Cal. 247, 187 P.965 (1920) (medical license); Breecher v. Riley, 187 Cal. 121, 200 P.1042 (1921) (real estate license); Hewitt v. Bd. of Medical Examiners, 148 Cal. 590, 84 P.39 (1906) (medical license); Ex parte Whitley, 144 Cal. 167,77, P.879 (1904) (dental license).

268 Suckow v. Alderson, 182 Cal. 247, 250, 187 P.965, 966 (1920); Ex parte Whitley, 144 Cal. 167, 179, 77 P.879, 884 (1904).

269 35 Cal. 2d 870, 222 P.2d 1 (1950).

270 Id. at 877-78, 222 P.2d at 6.

271 208 Cal. App. 2d 98, 25 Cal. Rptr. 116 (1962).

272 Id. at 102, 25 Cal. Rptr. at 119.

273 B. SCHWARTZ, ADMINISTRATIVE LAW, 27 N.Y.U.L. REV. 928, 928 (1952) (1952 Survey of New York Law).

274 Old Republic Life Insurance Co. v. Thacher, 12 N.Y. 2d 48, 234, N.Y.S. 2d 702, 186 N.E. 2d 554 (1962).

275 89 Utah 404, 57 P.2d 734 (1936).

276 Accord State ex. rel. Lanier v. Vines, 274 N.C. 486 164 S.E. 2d 161 (1968) (Overturning a statute which conferred on a commissioner authority to impose fines up to $25,000.)

277 1. DAVIS ADMINISTRATIVE LAW TREATISE, §2.13 at 137-38.

278 13 Utah 2d 123, 369 P.2d (1962) cert. denied 371 U.S. 819 (1962).

279 "The question whether a penalty may be administratively imposed does not depend upon its severity. An agency in revoking a license may exercise a power of life and death over a valuable business, but ordinarily may not impose a ten-dollar criminal fine." 1 DAVIS, ADMINISTRATIVE LAW TREATISE, §2.13 at 134.

280 "A statute which gives an administrator the right to enforce or waive penalty at his discretion confers upon him arbitrary and discriminatory power, which he may exercise in one case and ignore in another. Such a statute and the laws of the administrator under it are each unconstitutional." Lewis Consolidated School District v. Johnson, 127 N.W. 2d 118, 128 (Iowa, 1964); See Jersey Maid Milk Products Co. v. Brock, 13 Cal. 2d 620, 651-52, 91 P.2d 577, 594-95 (1939) (the Supreme Court of California found the power of the State Director of Agriculture to fix the amount of damages in complaint actions against milk distributors and to order payment of those damages by the distributors of the complainants to constitute an unconsitutional delegation of judicial authority. This situation differs from the traffic adjudication model in that a DMV hearing officer will be imposing sanctions with reference to a uniform sanction guide).

281 "We also know that the trend of modern decisions is to liberalize the setting of standards and to require less exactness in regard to them in legislative enactments. But where standards or guidelines are readily possible we think the

legislature may not abandon them altogether, and say in effect to the administrative body, 'You may do anything you think will further the purpose of the law; in so doing you set up whatever standards you deem necessary and you may punish for violation of these standards.'" Lewis Consolidated School District v. Johnston, 127 N.W. 2d 118, 125 (Iowa 1964); See Gilgert v. Stockton Port District, 7 Cal. 2d 384, 60 P.2d 847 (1936). Gilgert is often cited as a significant limitation on the power of administrative agencies, as indeed it is. There, the legislature delegated to the Stockton Port Authority the power to enact regulations for the control of waterways and further to prescribe penalties up to $500 and/or 6 months imprisonment for violation of these regulations. The Supreme Court of California found the scheme unconstitutional. The situation in Gilgert differs from the California Model in three respects (1) the penalties in Gilgert were clearly punitive, (2) The Port Authority, not the legislature, enacted the regulations to be enforced, (3) the enforcement was to be held routinely through the courts, and not through administrative action, and thus the court was not confronted with the question of the competency of an agency to impose a fine. See also Moore v. Municipal Court, 170 Cal. App. 2d 548, 339 P.2d 196 (1959) (legislature may not delegate to a municipal fire district the authority to enact fire control regulations and further to prescribe penalties for these violations).

282 See California Model at 1 n.4.

283 57 Ill. 2d 170, 311 N.E. 2d 146 (1974).

284 Id. 311 N.E. 2d at 150. Accord Southern Ill. Asphalt Co. Inc., v. Pollution Control Bd., 60 Ill. 2d 204, 326 N.E. 2d 406 (1975); City of Monmouth v. Pollution Control Bd., 57 Ill. 2d 482, 313 N.E. 2d 161 (1974); People ex rel. Scott v. Janson 57 Ill. 2d 451, 312 N.E. 2d 620 (1974).

285 City of Waukegan v. Pollution Control Bd., 57 Ill. 2d 170, 311 N.E. 2d 146, 148-49 (1974).

286 "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." CAL. CONST. Art. III, §3. "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." ILL. CONST. Art. II, §1. "The judicial power of this state is vested in the Supreme Court, courts of appeal, superior court, municipal courts, and justice courts. All except justice courts are courts of record." CAL CONST. Art.

VI, §1. "The judicial power is vested in a Supreme Court, an appellate court and circuit courts. Ill. CONST. Art. VI, §1.

287 People v. Wills, 23 Ill. App. 3d 25, 319 N.E. 2d 269 (1974) (Statute conferring on Parole and Pardon Board the authority, on revocation of parole, to recommit defendant to prison beyond the maximum term imposed by the trial court, constitutes an unconstitutional delegation of judicial powers). See also 1 DAVIS ADMINISTRATIVE LAW TREATISE, §2.13 at 134.

288 See Separation of Powers, §1 infra..

289 People ex. rel. Younger v. County of El Dorado, 5 Cal. 3d, 480, 96 Cal. Rptr. 553, 487 P.2d 1193 (1971).

290 Rainey v. Michel, 6 Cal. 2d 259, 57 P.2d 932 (1936).

291 General Motors Corp. v. Cal. Unemp. Ins. Appeals Bd., 253 Cal. App. 2d 540, 61 Cal. Rptr. 483 (1967); Sears Roebuck and Co. v. Walls, 178 Cal. App. 2d 284, 2 Cal. Rptr. 847 (1960).

292 35 Cal. 2d 870, 222 P.2d 1 (1950).

293 Id. at 877-78, 222 P.2d at 6.

294 See CAL. VEH. CODE §14250.5.

295 CAL. VEH. CODE §14250.

296 Drummy v. State Board of Funeral Directors and Embalmers, 13 Cal. 2d 75, 87 P.2d 848 (1939).

297 Standard Oil Co. v. State Board of Equalization, 6 Cal. 2d 557, 59 P.2d 119 (1936).

298 Id.

299 Id.

300 Drummy v. State Board of Funeral Directors, 13 Cal. 2d 75, 84, 87 P.2d 848 (1939).

301 CAL. CODE CIV. PROC. §1094.5.

302 See Bixby v. Pierno, 4 Cal. 3d 130, 138, 93 Cal. Rptr. 234, 239, 481 P.2d 242, 247 (1971).

303 "It [the writ of mandamus] may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person." CAL. CODE CIV. PROC. §1085. See also CAL. CODE CIV. PROC. §89, which delineates the jurisdiction of the municipal courts.

304 "The Supreme Court, courts of appeal superior courts and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus certiorari, and prohibition." CAL. CONST. Art. VI, §10.

305 W. DEERING, CALIFORNIA ADMINISTRATIVE MANDAMUS (1966) §5.3 at 36 (hereinafter referred to as DEERING).

306 Id. §5.4 at 36-37.

307 Id. §5.5 at 37.

308 See n. 319 infra. and accompanying text.

309 See n. 320 infra. and accompanying text.

310 See n. 347-52 infra. and accompanying text.

311 CAL. CODE CIV. PROC. §1094.5(b) actually refers to the question of whether or not there has been a fair "trial". In the present context, however, that reference appears to extend to hearings as well.

312 DEERING, §5.9 at 40.

313 CAL. CODE CIV. PROC. §1094.5(b).

314 DEERING, §5.15 at 43-44.

315 Id. §5.15 at 43-44.

316 Id. §5.43 et seq. at 60-61.

317 Manning v. Watson, 108 Cal. App. 2d 705, 239 P.2d 688 (1952) (finding of fact that petitioner had been convicted of a misdemeanor did not support the inference that petitioner's conduct constituted a violation of the Business and Professions

Code, and so did not support the agency's decision to revoke petitioner's real estate license).

318 See n. 310 infra. and accompanying text.

319 "Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence; . . ." CAL CODE COV. PROC. §1094.5(c).

320 " . . . [A]nd in all other cases abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." CAL CODE CIV. PROC. §1094.5(c).

321 4 Cal. 3d 130, 93 Cal. Rptr. 234, 481 P.2d 242 (1971).

322 Id. at 144, 93 Cal. Rptr. at 244, 481 P.2d at 252.

323 "As we have noted, in determining whether the right is sufficiently basic and fundamental to justify the independent judgment review, the courts have considered the degree to which a right is 'vested', that is already possessed by the individual." Id.at 146, 93 Cal. Rptr. at 245, 481 P.2d at 253.

324 Actually, the court's considerstion of whether a disputed right is "fundamental" is a development which commenced in 1971 with Bixby. Prior to that time, the independent judgment review had been invoked by the courts solely on the basis of whether or not the right was vested. See 4 Cal. 3d at 153, 93 Cal. Rptr. at 251, 481 P.2d at 259 (Burke, J., dissenting). Thus it is not surprising that, apart from the determination that a right is or is not vested, there is presently little in the way of judicial guidance as to what constitutes a "fundamental" right.

325 Strumsky v. San Diego City Employees Retirement Ass'n., 11 Cal. 3d 28, 112 Cal. Rptr. 805, 520 P.2d 29 (1974).

326 Magit v. Bd. of Medical Examiners, 57 Cal. 2d 74, 17 Cal. Rptr. 488, 336 P.2d 816 (1961).

327 Tringham v. State Bd. of Education, 50 Cal. 2d 507, 326 P.2d 850 (1958).

328 Thomas v. California Employment Stabilization Comm., 39 Cal. 2d 501, 247 P.2d 561 (1952).

329 Cooper v. State Bd. of Medical Examiners, 35 Cal. 2d 242, 217 P.2d 630 (1950).

330 Moran v. Bd. of Medical Examiners, 32 Cal. 2d 301, 196 P.2d 20 (1948).

331 Sipper v. Urban, 22 Cal. 2d 138, 137 P.2d 425 (1943).

332 Laisne v. Cal. State Bd. of Optometry, 19 Cal. 2d 831,123 P.2d 457 (1942).

333 Valenzuela v. Bd. of Civil Service Comrs., 40 Cal. App. 3d 557, 115 Cal. Rptr. 103 (1974).

334 California v. Superior Court, 16 Cal. App. 3d 87, 93 Cal. Rptr. 663 (1971).

335 Cleveland Chiropractic College v. State Bd. of Chiropractic Examiners, 11 Cal. App. 3d 25, 89 Cal. Rptr. 572 (1970).

336 Employers Service Assn. v. Grady, 243 Cal. App. 2d 817, 52 Cal. Rptr. 831 (1966).

337 Almaden-Santa Clara Vineyard v. Paul, 239 Cal. App. 2d 860, 49 Cal. Rptr. 256 (1966).

338 Post v. Jackson, 180 Cal. App. 2d 297, 4 Cal. Rptr. 817 (1960).

339 Sears Roebuck and Co. v. Wallis, 178 Cal. App. 2d 284, 2 Cal. Rptr. 847 (1960).

340 Hohreiter v. Garrison, 81 Cal. App. 2d 384, 184 P.2d 323 (1947).

341 Bixby v. Pierno, 4 Cal. 3d 130, 93 Cal. Rptr. 234, 481 P.2d 242 (1971).

342 Bertch v. Social Welfare Department, 45 Cal. 2d 524, 289 P.2d 485 (1955). There is probably no way to reconcile this with the earlier appellate case of Thomas v. California Employment Stabilization Comm., 39 Cal. 2d 501, 247 P.2d 561 (1952), in which the court applied independent judgment review in a situation involving denial of application of unemployment insurance. Thomas remains an anomally in the case law surrounding independent judgment-substantial evidence review.

343 So. California Jockey Club, Inc., v. California Racing etc. Bd., 36 Cal. 2d 167, 223 P.2d 1 (1952).

344 LeBlanc v. Swoap, 48 Cal. App. 3d 1020, 122 Cal. Rptr. 408 (1975).

345 Young v. Governing Board, 40 Cal. App. 3d 769, 115 Cal. Rptr. 456 (1974).

346 Beverly Hills Fed. S. & L. Ass'n. v. Supreme Court, 259 Cal. App. 2d 306, 66 Cal. Rptr. 183 (1968).

347 35 Cal. 2d 870, 222 P.2d 1 (1950).

348 Id.at 875-76, 222 P.2d at 5, citing 25 Am. Jur. 456-57, §163.

349 267 Cal. App. 2d 750, 73 Cal. Rptr. 452 (1968).

350 Id. at 752, 73 Cal. Rptr. at 454.

351 262 Cal. App. 2d 656, 69 Cal. Rptr. 137 (1968).

352 81 Cal. App. 2d 384, 184 P.2d 323 (1947).

353 See General Motors Corp. v. Cal. Unemp. Ins. Appeals. Bd., 253 Cal. App. 2d 540, 61 Cal. Rptr. 483 (1967); Sears Roebuck and Co., v. Wallis, 178 Cal. App. 2d 284, 2 Cal. Rptr. 847 (1960).

354 ". . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. AMEND. XIV. §1; "all laws of a general nature shall have a uniform operation." CAL. CONST. Art. I, §11; " . . . nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms shall not be granted to all citizens." CAL. CONST. Art. I, §21.

355 Rosenthal v. Hartnett, 36 N.Y. 2d 269, 367, N.Y.S. 2d 247, 326, N.E. 2d 811 (1975).

356 Id. at 273, 367 N.Y.S. 2d at 249, 326 N.E. 2d at 813.

357 Id. at 274, 367 N.Y.S. 2d at 250, 326 N.E. 2d at 814.

358 Salsburg v. Maryland, 346, U.S. 545 (1954) (rules of evidence in prosecutions for gambling offenses).

359 Rosenthal v. Hartnett, 36 N.Y.2d at 269, 274, 367 N.Y.S. 2d 247, 250, 326 N.E. 2d 811, 814 (1975).

360 Katzenback v. Morgan, 384 U.S. 641, 657 (1966) (in which the court held that a statute prohibiting the enforcement of the English literacy requirement only as to those educated in American flag schools [schools located within United States jurisdiction] did not work an invidious discrimination in violation of equal protection of laws.)

361 Id.quoting Roschen v. Ward, 279 U.S. 337, 339 (1929).

362 Id.quoting Semler v. Dental Examiners, 294, U.S. 608, 610 (1935).

363 Id. quoting Williamson v. Lee Optical Co., 348 U.S. 483,489 (1955).

364 394 U.S. 802 (1969).

365 Id. at 809.

366 Id. at 811.

367 68 Cal. 2d 357, 66 Cal. Rptr. 710, 438 P.2d 358 (1968).

368 Id. at 367,66 Cal. Rptr. at 718, 438 P.2d at 366 (emphasis added). "So long as such classification 'does not permit one to exercise the privilege while refusing it to another of like qualificiations, under like conditions and circumstances, it is unobjectionable upon this ground'". Id. at 367-68, 66 Cal. Rptr. at 719, 438 P.2d at 367, quoting Watson v. Division of Motor Vehicles, 212 Cal. 279, 284, 298 P.481, 483 (1931).

369 The court continued by stating, "[s[tatutory discrimination between classes which are in fact different must be presumed to be relevant to a permissible legislative purpose, and will not be deemed to be a denial of equal protection if any state of facts could be conceived which would support it." Id. at 368, 66 Cal. Rptr. at 719, 438 P.2d at 367, quoting Asbury Hospital v. Cass County, 326 U.S. 207, 215 (1945).

370 Id. at 367, 66 Cal. Rptr. at 718, 438 P.2d at 366.

371 See California Model.

372 12 STAN. L. REV. 388, 437 (1959-60) (Traffic Law Administration).

373 See 10 STAN. L. REV. 471 (1957-58) (The California Juvenile Court.)

374 See CAL. WELF. & INST. CODE §550 et. seq.

375 12 STAN. L. REV. 388, 428 (1959-60) (Traffic Law Administration).

376 Id.

377 Id.at 429.

378 Id.

379 37 Cal. App. 3d 998, 112 Cal. Rptr. 730 (1974).

380 Id. at 1004, 112 Cal. Rptr. at 734.

381 CAL. CONST. Art. IV §14.

382 CAL. CONST. Art. IV §11, (emphasis added).

383 See In re Emmett, 120 Cal. App. 349, 7 P.2d 1096 (1932) (not applicable to traffic offense or battery); Harmer v. Superior Court of Sacramento County, 275 Cal. App. 2d 345, 348, 79 Cal. Rptr. 855, 857 (1969) (applicable to any" . . . civil process without qualification as to the kind or subject matter of the lawsuit."); Op. Leg. Counsel, 1947 A.J. 5215, (opinion of legislative counsel that the exemption applies only to civil process).

384 120 Cal. App. 349, 7 P.2d 1096 (1932).

385 Referring to the exemption of CAL. CONST. Art. IV §11 (prior to November 8, 1966).

386 ". . . Senators and Representatives shall, . . . in all cases except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective houses, and in going to, and returning from same; . . ." U. S. CONST. Art. I §6.

387 In re Emmett, 120 Cal. App. 349, 353, 7 P.2d 1096, 1097 (1932).

388 CAL. GOV'T CODE §22.

389 CAL. GOV'T CODE §26660(a).

390 CAL. GOV'T CODE §26660(b).

391 See In re Emmett, 120 Cal. App. 349, 7 P.2d 1096 (1932); Op. Leg. Counsel, 1947 A.J. 5215.

ADMINISTRATIVE ADJUDICATION OF TRAFFIC VIOLATIONS CONFRONTS THE DOCTRINE OF SEPARATION OF POWERS

SUMMARY

By Robert Force*

More than 40 years ago the Wickersham Commission, a distinguished group of citizens appointed by the President of the United States, recommended that minor traffic violations should be "decriminalized" and handled through administrative processes. This proposal was reiterated from time to time, but to no avail. Recently, New York has adopted a system of administrative adjudication of minor traffic violations, and several national bodies including another Presidential Commission have strongly advocated decriminalization and administrative adjudication in this area. At present, the National Highway Traffic Safety Administration of the United States Department of Transportation is giving careful scrutiny to these proposals.

Consideration of administrative adjudication in lieu of the current judicial process poses several constitutional problems, among which the separation of powers issue is preeminent. The central question addressed in the principal paper 1/ and in the summary is: "Does the doctrine of separation of powers prohibit the administrative adjudication of traffic violations?" This issue is essentially one of State constitutional law, and since the laws of the 50 States differ in degree and substance, caution must be exercised in offering any conclusions. Nevertheless, it has been concluded that a statutory scheme could be drafted which would not violate the doctrine of separation of powers. As expressed in the principal paper, 2/ "a statute which:

(1) Complies with the due process requirements for administrative adjudication

(2) Is applicable to minor traffic violations (which comprise the bulk of all violations)

(3) Is part of a decriminalized approach to traffic violations which precludes incarceration as a sanction

(4) Utilizes sanctions which either are fixed by the legislature, or are traffic safety oriented, or which are imposed according to standards established by the legislature

(5) Provide for some form of ultimate judicial review

would probably be constitutional.

The principal paper is not a brief for administrative adjudication. The decision to adopt administrative adjudication will depend on the results of empirical studies and policy considerations. The principal paper, however, examines possible legal obstacles to the adoption of administrative adjudication and exposes those which are of dubious validity.

"Separation of Powers" is generally accepted as referring to the division of governmental among three departments, legislative department, etc., and each department is precluded from invading the jurisdiction of another department such as by attempting to exercise any of the powers of that other branch. It is more difficult to define "adjudication" because that term has different meanings depending on the context in which it is used. In the context of the issues examined in the principal paper, a narrow definition which equates adjudication with the judicial function, i.e., adjudication is what judges do, is rejected. It is uncontrovertable that administrative agencies, on certain occasions, perform an adjudication function, and the various Federal and State administrative procedure acts specifically provide for specific procedures to be followed in agency adjudication. The definition which is used in the principal paper is one which views adjudication as a decision-making process which follows a particular form and which includes most judicial proceedings and proceedings before nonjudicial tribunals which are conducted in a manner similar to judicial proceedings.

Separation of powers has two pragmatic objectives: (1) fairness for the citizen when he deals with government or it deals with him; and (2) the diffusion of governmental power among several branches of government so as to prevent the concentration of power in any one branch. In light of recent developments in the law of "due process" it is suggested that the doctrine of separation of powers adds little, if anything, to assure fairness to the citizen. Due process is applicable to agency adjudications and the requirement for an impartial tribunal has been consistently regarded as an element of due process. Thus, any benefit to the citizen by way of fairness which is secured by separation of powers merely duplicates that which is protected under due process of law.

The second aspect of the doctrine - deconcentration of power - requires a more complex analysis. However, once the distinction between "judicial power" (in the constitutional sense) and "adjudication" is grasped, it is also clear that administrative adjudication does not violate separation of powers on this basis either. The essence of judicial power in the constitutional sense is the responsibility for making the final determination of the constitutionality or legality of legislative and executive action. It is the power to say what the law is through interpretation and construction. It is the establishment of a forum in the judicial branch to which citizens may turn to secure ultimate protection from arbitrary governmental actions. But as the late Chief Justice Vanderbilt of the New Jersey Supreme Court has stated:

> "To the extent that the States have resorted to the use of such administrative tribunals for adjudication, the business of the State courts has been substantially reduced, but not their powers because of the constitutional right of an individual to secure a review of administrative determinations through the great prerogative writs or their modern substitutes even in circumstances where the legislature may not have provided for review."3/

Under this view "adjudication" is not "judicial power"; "adjudication" is a function of "judicial power," a manner in which "judicial power" may be exercised. It does not follow, however, that this adjudication function is exercised exclusively by the courts. Other governmental bodies have consistently resorted to the adjudication device where it is an appropriate manner for exercising lawfully delegated powers. An administrative adjudication scheme for handling traffic violations established under appropriate legislative standards, reserving in the legislature the power to change the rules, and which reserves to the courts the final power to correct administrative errors, provide for uniform interpretation, etc., would not appear to invade either the "legislative" or "judicial" power.

This conclusion is consistent with the present status of the doctrine at both the national and State levels. Separation of powers is less strictly adhered to at the national level. Long ago the United States Supreme Court, in discussing the doctrine, observed that there were "matters involving public

rights" 4/ which Congress could delegate to the courts, or to an administrative agency. The leading Federal case is Crowell v. Benson 5/ where the Supreme Court held that separation of powers was not violated when a matter formerly within the jurisdiction of the courts was transferred to an administrative tribunal for initial adjudication. Notwithstanding the fact that the decision was qualified by requiring opportunities for judicial review, it is important to note that the case involved private litigants contesting private rights - an area where both Federal and State courts had been particularly vigorous in applying the doctrine of separation of powers.

The United States Constitution does not require the States to adopt separation of powers, yet the doctrine is more strictly adhered to in the States. Many State constitutions expressly provide for separation of powers, while in a minority of States, the courts have implied the doctrine, much the same as the Federal courts have drawn the implication from the division of powers among the three branches of government. Administrative adjudication has been permitted in varying degrees in the States. Some States recognize the appropriateness in vesting administrative agencies with judicial powers or with power to adjudicate. Many courts tolerate agency adjudication only in matters which can be classified as quasi-judicial. The term "quasi-judicial" often appears to be nothing more than a label applied to agency adjudication. In the United States the term is applied in situations where an administrative agency uses a procedure similar to those used by courts to determine factual issues as an incident to promoting specific legislative objectives. Agency action predicated upon the facts so determined may involve the exercise of agency discretion or may, where action is mandated by the legislature, involve little or no discretion. The critical requirement in concluding that a proceeding is "quasi-judicial" is the link between the agency adjudication and the promotion of a particular legislative objective.

The key to the constitutionality of administrative adjudication of traffic violations may lie in the approach to sanctions. Courts have distinguished between administratively imposed sanctions and penal sanctions. Administrative sanctions are not intended as or regarded as punishment. Agencies do not try criminal cases and ordinarily do not impose incarceration as a sanction. Therefore, any scheme for administrative

adjudication of traffic violations would require that these violations be decriminalized. The inability to put a violator in jail under the decriminalized scheme would not be a serious loss since imprisonment is rarely imposed for minor traffic violations. However, sanctions other than imprisonment such as fines may be imposed by administrative agencies, although some states require that the precise amount of the fine be fixed by the legislature and not left to the discretion of the agency.

The imposition of a sanction by an agency which is tailored to the direct accomplishment of its objectives will meet with the least resistance in the courts. This more readily represents an example of an agency exercising "quasi-judicial" powers, especially where the agency exercises broad regulatory responsibilities in the particular area. In the traffic area, sanctions such as compulsory driver education, suspension or revocation of licenses, since they are intended to promote traffic safety either by improving driver skills or removing highway menaces, would clearly be acceptable sanctions.

The legality of agency adjudication often is dependent on the process followed by the agency. Criticism of agency adjudication is based not infrequently on claims that the agency has used unfair procedures. The late Roscoe Pond, former Dean of the Harvard Law School, criticized 6/ agency adjudication as it compared with judicial proceedings in that only judges are trained to look at both sides of a dispute and base their decisions on legal principles. Judicial proceedings are matters of public record and subject to review by an independent branch of the judiciary. Aside from the fact that in the United States we train lawyers not judges, and lawyers could be and often are used as administrative adjudicators, Pound's conception of judicial justice more accurately reflects practices in serious criminal cases. Minor offenses such as traffic cases are more often handled in ways that are more characteristic of administrative practices rather than judicial procedures. Furthermore, there is no reason why administrative adjudications could not be subjected to the "record" and "judicial review" procedures applicable in the judicial system. Finally due process is applicable to agency adjudication and can be relied on to insure procedural fairness.

Minor offenses do not ordinarily carry with them the right to jury trial or as practical matter the right to appointed counsel since that right attaches only in cases where the sanction

actually imposed is incarceration - a sanction rarely imposed in minor traffic cases. Due process does require an agency to provide an impartial tribunal, notice and hearing, and probably confrontation and cross-examination. It is extremely important to note that even beyond due process many States have statutory requirements supplemented by judicial review which are designed to achieve fairness in agency adjudications. For example, a number of States have adopted statutes similar to the Revised Model State Administrative Procedure Act which specify the procedures to be followed in agency adjudication proceedings.

These statutes and decisionals law customarily provide for judicial review of agency adjudication. Clearly issues of constitutionality, issues of law and allegations of arbitrariness or capriciousness are reviewable by the courts. However, the practice for reviewing fact issues varies among the States. In some States the court examines the record to ascertain if the agency determination is not clearly erroneous, and in other States, if there is substantial evidence in the record to support the agency determination. In some States review is by way of trial de novo.

In conclusion it may be observed that the difference between minor traffic violations and true crimes (traditional crimes) are so manifold and substantial that one can say that the transfer of the adjudication function to an administrative agency could be effected without seriously impinging on the power or stature of the judicial branch. It is apparent that if the adjudication function is transferred, agency adjudication will retain some judicial characteristics; if the adjudication function remains in the judiciary it is expected that the court will borrow and innovate new techniques which are administrative in character.

SUMMARY FOOTNOTES

* Professor of Law, Tulane University School of Law.

1/ The author of this summary prepared a legal paper entitled "Administrative Adjudication of Traffic Violations Confronts The Doctrine of Separation of Powers," as part of consulting services for Arthur Young & Company, in connection with their study of traffic adjudication processes. The Arthur Young & Company study was conducted for NHTSA of the United States Department of Transportation and the author's legal paper in toto was included in the study report. References in this "Summary" to the "principal paper" are to the legal paper prepared for Arthur Young and submitted to NHTSA.

2/ Principal paper page 3.

3/ id at 13.

4/ id at 15.

5/ 285 U.S. 22 (1932). Discussed at pages 15-17 of the principal paper.

6/ Principal paper pages 44-45.

APPENDIX E

Disposition of Fines and Forfeitures - Penal Code 1463

§ 1463. Disposition of fines or forfeitures collected in municipal or justice courts; deposits with court; unclaimed deposits

Except as otherwise specifically provided by law:

(1) **Deposit and distribution.** All fines and forfeitures including Vehicle Code fines and forfeitures collected upon conviction or upon the forfeiture of bail, together with moneys deposited as bail, in any municipal court or justice court, shall, as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in which such court is situated. The moneys so deposited shall be distributed as follows:

(a) **County funds; arrests by state officers.** Once a month there shall be transferred into the proper funds of the county an amount equal to the fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail following arrests made by officers or other persons employed by the state or by the county in which such court is situated, exclusive of fines or forfeitures or forfeitures of bail collected from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code within the limits of a city within the county.

(b) **City traffic safety fund; arrests under Vehicle Code by state officers; exceptions; county general fund.** Except as otherwise provided in this subdivision, once a month there shall be transferred into the traffic safety fund of each city in the county an amount equal to 50 percent of all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code within that city, and an amount equal to the remaining 50 percent shall be transferred to the special road fund of the county; provided, however, that the board of supervisors of the county may, by resolution, provide that not more than 50 percent of the amount to be transferred to the special road fund of the county, be transferred into the general fund of the county.

Once a month there shall be transferred into the general fund of the county an amount equal to that percentage of the fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code on state highways constructed as freeways whereon city police officers enforced the provisions of the Vehicle Code on April 1, 1965, within the limits of a city within the county which is set forth in the

schedule appearing in subparagraph (c) of this paragraph (1). If this paragraph is applicable within a city, it shall apply uniformly throughout the city to all freeways regardless of the date of freeway construction or completion.

(c) **County general fund; arrests by city officers.** Once a month there shall be transferred into the general fund of the county an amount equal to that percentage of the fines and forfeitures collected during the preceding month upon conviction or upon the forfeiture of bail following arrests made by officers or other persons employed by each city in the county which is set forth in the following schedule:

County and city	Percentage
Alameda	
Alameda	18
Albany	29
Berkeley	19
Emeryville	13
Hayward	10
Livermore	7
Oakland	22
Piedmont	44
Pleasanton	17
San Leandro	9
County percentage	21
Amador	
Amador	25
Ione	25
Jackson	25
Plymouth	25
Sutter Creek	25
County percentage	29
Butte	
Biggs	75
Chico	22
Gridley	49
Oroville	9
County percentage	20
Calaveras	
Angels	62
County percentage	62
Colusa	
Colusa	13
Williams	17
County percentage	16
Contra Costa	
Antioch	11
Brentwood	24
Concord	18
El Cerrito	19
Hercules	14
Martinez	22
Pinole	22
Pittsburg	5
Richmond	14
San Pablo	12
Walnut Creek	24
County percentage	14
Del Norte	
Crescent City	19
County percentage	19
El Dorado	
Placerville	14
County percentage	14
Fresno	
Clovis	23
Coalinga	21
Firebaugh	16
Fowler	34
Fresno	26
Huron	24
Kerman	14
Kingsburg	34
Mendota	11
Orange Cove	24
Parlier	21
Reedley	30
Sanger	29
San Joaquin	15
Selma	14
County percentage	24
Glenn	
Orland	27
Willows	36
County percentage	32
Humboldt	
Arcata	9
Blue Lake	26
Eureka	11

County and city	Percentage
Humboldt Cond't	
Ferndale	30
Fortuna	17
Trinidad	11
County percentage	11
Imperial	
Brawley	8
Calexico	10
Calipatria	30
El Centro	5
Holtville	16
Imperial	6
Westmorland	12
County percentage	8
Inyo	
Bishop	25
County percentage	25
Kern	
Bakersfield	10
Delano	13
Maricopa	36
Shafter	15
Taft	19
Tehachapi	12
Wasco	28
County percentage	12
Kings	
Corcoran	31
Hanford	21
Lemoore	25
County percentage	25
Lake	
Lakeport	33
County percentage	33
Lassen	
Susanville	21
County percentage	21
Los Angeles	
Alhambra	13
Arcadia	11
Avalon	54
Azusa	11
Bell	11
Beverly Hills	14
Burbank	14

County and city	Percentage
Los Angeles—Continued	
Claremont	5
Compton	16
Covina	11
Culver City	10
El Monte	11
El Segundo	11
Gardena	22
Glendale	16
Glendora	12
Hawthorne	7
Hermosa Beach	14
Huntington Park	12
Inglewood	16
La Verne	14
Long Beach	14
Los Angeles	8
Lynwood	9
Manhattan Beach	13
Maywood	15
Monrovia	11
Montebello	11
Monterey Park	11
Palos Verdes Estates	10
Pasadena	9
Pomona	12
Redondo Beach	15
San Fernando	17
San Gabriel	16
San Marino	5
Santa Monica	11
Sierra Madre	11
Signal Hill	24
South Gate	13
South Pasadena	9
Torrance	16
Vernon	25
West Covina	11
Whittier	11
County percentage	11
Madera	
Chowchilla	17
Madera	16
County percentage	17

County and city	Percentage
Marin	
Belvedere	16
Corte Madera	12
Fairfax	30
Larkspur	30
Mill Valley	13
Ross	18
San Anselmo	11
San Rafael	13
Sausalito	21
County percentage	16
Mendocino	
Fort Bragg	19
Point Arena	40
Ukiah	10
Willits	24
County percentage	17
Merced	
Atwater	23
Dos Palos	21
Gustine	23
Livingston	14
Los Banos	13
Merced	18
County percentage	18
Modoc	
Alturas	42
County percentage	42
Monterey	
Carmel	17
Gonzalez	10
Greenfield	13
King City	36
Monterey	13
Pacific Grove	22
Salinas	36
Soledad	16
County percentage	23
Napa	
Calistoga	37
Napa	11
St. Helena	12
County percentage	14
Nevada	
Grass Valley	7
Nevada City	17
County percentage	9
Orange	
County percentage	15
Placer	
Auburn	18
Colfax	8
Lincoln	26
Rocklin	16
Roseville	10
County percentage	14
Plumas	
Portola	19
County percentage	19
Riverside	
Banning	35
Beaumont	15
Blythe	9
Coachella	12
Corona	12
Elsinore	10
Hemet	35
Indio	16
Palm Springs	35
Perris	14
Riverside	16
San Jacinto	41
County percentage	35
Sacramento	
Folsom	31
Galt	25
Isleton	13
North Sacramento	10
Sacramento	21
County percentage	26
San Benito	
Hollister	9
San Juan Bautista	28
County percentage	11
San Bernardino	
Barstow	23
Chino	14
Colton	21
Fontana	15
Needles	33
Ontario	20
Redlands	28
Rialto	15
San Bernardino	20
Upland	14
County percentage	20

County and city	Percentage
San Diego	
Carlsbad	8
Chula Vista	23
Coronado	25
Del Mar	8
El Cajon	17
Escondido	16
Imperial Beach	8
La Mesa	23
National City	14
Oceanside	15
San Marcos	8
Vista	8
San Diego	6
County percentage	25
San Joaquin	
Lodi	18
Manteca	8
Ripon	11
Stockton	14
Tracy	15
County percentage	14
San Luis Obispo	
Arroyo Grande	9
Paso Robles	26
Pismo Beach	8
San Luis Obispo	21
County percentage	16
San Mateo	
Atherton	27
Belmont	7
Burlingame	38
Colma	40
Daly City	24
Hillsborough	75
Menlo Park	12
Millbrae	16
Redwood City	27
San Bruno	13
San Carlos	8
San Mateo	42
South San Francisco	12
County percentage	21
Santa Barbara	
Guadalupe	28
Lompoc	16
Santa Barbara	1
Santa Maria	12
County percentage	13

County and city	Percentage
Santa Clara	
Alviso	75
Campbell	16
Gilroy	28
Los Altos	16
Los Gatos	30
Morgan Hill	11
Mountain View	13
Palo Alto	21
San Jose	13
Santa Clara	16
Sunnyvale	26
County percentage	16
Santa Cruz	
Capitola	21
Santa Cruz	23
Watsonville	21
County percentage	22
Shasta	
Redding	22
County percentage	22
Sierra	
Loyalton	75
County percentage	75
Siskiyou	
Dorris	18
Dunsmuir	29
Etna	18
Fort Jones	46
Montague	75
Mount Shasta	37
Tulelake	33
Yreka	30
County percentage	29
Solano	
Benicia	17
Dixon	28
Fairfield	31
Rio Vista	19
Suisun	7
Vacaville	15
Vallejo	18
County percentage	19
Sonoma	
Cloverdale	37
Healdsburg	33
Petaluma	21
Santa Rosa	14
Sebastopol	28
Sonoma	28
County percentage	19

County and city	Percentage
Stanislaus	
Ceres	14
Modesto	15
Newman	10
Oakdale	15
Patterson	20
Riverbank	18
Turlock	19
County percentage	15
Sutter	
Live Oak	17
Yuba City	17
County percentage	17
Tehama	
Corning	26
Red Bluff	39
Tehama	10
County percentage	31
Tulare	
Dinuba	21
Exeter	23
Lindsay	24
Porterville	26
Tulare	20
Visalia	17
Woodlake	15
County percentage	21
Tuolumne	
Sonora	23
County percentage	23
Ventura	
Fillmore	16
Ojai	16
Oxnard	16
Port Hueneme	16
Santa Paula	16
Ventura	16
County percentage	16
Yolo	
Davis	22
Winters	19
Woodland	20
County percentage	20
Yuba	
Marysville	15
Wheatland	38
County percentage	15

In any county for which a county percentage is set forth in the above schedule and which contains a city which is not listed or which is hereafter created, there shall be transferred to the county general fund the county percentage. In any county for which no county percentage is set forth, and in which a city is hereafter created, there shall be transferred to the county general fund 15 percent.

A county and a city therein may, by mutual agreement, adjust the percentages herein.

(d) **City funds; arrests by city or state officers for Vehicle Code misdemeanor violations.** Once a month there shall be transferred to

each city in the county an amount equal to the total sum remaining after the transfers provided for in subparagraphs (b) and (c) above have been made of the fines and forfeitures collected during the preceding month upon conviction or upon the forfeiture of bail following arrests made by officers or other persons employed by such city or arrests made by state officers for misdemeanor violations of the Vehicle Code.

(2) Money deposited with court, returnable or payable to state or other public agency. Any money deposited with such court or with the clerk thereof which, by order of the court or for any other reason, should be returned in whole or in part to any person, or which is by law payable to the state or to any other public agency, shall be paid to such person or to the state or to such other public agency by warrant of the county auditor, which shall be drawn upon the requisition of the clerk of such court.

Unclaimed bail. All money deposited as bail which has not been claimed within one year after the final disposition of the case in which such money was deposited, or within one year after an order made by the court for the return or delivery of such money to any person, shall be apportioned between the city and the county and paid or transferred in the manner hereinabove provided for the apportionment and payment of fines and forfeitures. This paragraph shall control over any conflicting provisions of law.

APPENDIX F

Summary of Driver Improvement Program Effectiveness Studies

May, 1976

Table 2. SUMMARY OF DRIVER IMPROVEMENT PROGRAM EFFECTIVENESS**

Study	Significance Over Control Group or Standard Group			Post Period (Months)	Treatment	Miscellaneous Comments KEY
	Acc.	Conv.	Both			
WARNING LETTERS (W/L)						
Temple & Ferguson (1958a)	NS	NS	-	24 24	N=200: Safety letter N=200: Control - no contact	I-A
Campbell (1958)	-	S	-	22 20	N=2880: W/L N=3814: Control - no contact	I-B
King (1960)	-	-	S S	6-24 6-24 6-24 6-24	N=139 high violators: W/L N=139 high violators: W/L returned N=193 low violators: W/L N=84 low violators: W/L returned	I-C
Kaestner, Warmoth & Syring (1967)	- - -	- - -	S S NS	6,12 6,12 6,12	N=232: Soft-sell W/L N=231: Personalized, standard W/L N=240: Standard W/L N=241: Control - no contact	I-D
McBride & Peck[1] (1969)	S S NS NS† NS†	NS† NS NS† NS† NS†	- - - - -	7 7 7 7 7 7	N=2924: Low threat/low intimate W/L N=2924: Low threat/high intimate W/L N=2924: High threat/low intimate W/L N=2924: High threat/high intimate W/L N=2924: Standard W/L N=3019: Control - dummy mail contact	I-E
Marsh (1971)	NS NS	NS NS	- -	12 12 12 12	N=1274 males: W/L N=1379 males: Control - dummy mail contact N=195 females: W/L N=156 females: Control - dummy mail contact	Refer to II-C
Kaestner & Speight* (1974)	-	-	NS	12 12	N=206: "Last chance" W/L N=199: Control - no contact	Covered in text
Marsh (1973)*	NS	NS	-	24 24	N=1274: W/L N=1379: Control - dummy mail contact	Refer to II-C
Epperson & Harano*[2] (1974)	NS	NS	-	6,12 6,12	N=8124: Low threat/high intimate W/L N=8299: Standard W/L	Covered in text

†Misleading as reported by Goldstein. These contrasts were significantly superior to the control using t-tests ($p \leq .05$), but not by the more conservative Dunnett statistic. The fact that all letter treatments were directionally superior to the control is in itself statistically significant based on a simple sign test.

*Studies not reported in Goldstein's 1973 review.

[1]Study also evaluated effectiveness of a questionnaire and a follow-up reinforcement letter. No effects found on questionnaire. Follow-up letter effects were dependent upon the type of W/L received.

[2]Study also evaluated the effectiveness of an informational pamphlet and a follow-up reinforcement letter. The informational pamphlet influenced accidents but not convictions during the first 6 months. For convictions, the follow-up letter interacted with the type of W/L.

**State Driver Improvement Analysis - Vol II. J.P. McGuire, R.J. Bernstein et. al., Contract #DOT-HS-4-00967, November 1975, Public Systems Incorporated, Sunnyvale, California.

Table 2. SUMMARY OF DRIVER IMPROVEMENT PROGRAM EFFECTIVENESS (Continued)

Study	Significance Over Control Group Or Standard Group			Post Period (Months)	Treatment	Miscellaneous Comments KEY
	Acc.	Conv.	Both			
GROUP MEETINGS ONLY						
Coppin (1961)	NS	S	-	12,24 12,24	N=244: 1 hr. meeting (DIM) N=196: Control - no contact	II-A
Coppin, Marsh & Peck (1965)	NS	N	-	12 12	N=1440: 1 hr. meeting (DIM) N=610: Control - no contact	II-B
Marsh (1971)	NS NS NS NS S[1] NS NS NS NS S	NS S NS NS NS NS NS NS NS NS	- - - - - - - - - -	12 12 12 12 12 12 12 12 12 12	N=1660 males: Subject Interaction Meeting (SIM) N=1631 males: Leader Interaction Meeting (LIM) N=1557 males: Group Educational Meeting (GEM) N=1666 males: Driver Improvement Meeting (DIM) N=1652 males: Group Administrative Review (GAR) N=1379 males: Control - dummy mail contact N=200 females: SIM N=196 females: LIM N=202 females: GEM N=197 females: DIM N=206 females: GAR N=156 females: Control - dummy mail contact	II-C
Wallace (1969)	- - - - -	- - - - -	NS NS NS S NS	6 6 6 6 6 6	N=72: Attitude Modification Session N=74: Crash Prevention Program N=82: Perceptual Modification Program N=150: Excused N=113: No shows N=79: Control - came in, filled out questionnaire - dismissed N=132: Control - no contact	II-D
Kaestelle & LeSeur (1965)	-	S	-	6 6	N=509: 3 - 2 hr. traffic safety clinics N=585: Control - no contact	II-E
Moore (1967)	-	NS	-	6,18 6,18	N=367: 3 - 2 hr. traffic safety clinics N=424: Control - called in for one short session	II-F
O'Neall & McKnight (1970)	-	-	NS	3 3	N=427: Group interviews N=253: Control - appeared and dismissed	II-G
Henderson & Kole (1967c)	NS	NS	-	1.81 yrs. 1.97 yrs.	N=144 males: 8-hr. group discussion N=191 males: Control - appeared, pretested	II-H
Scott & Greenberg (1968)	NS	NS	NS	36 36	N=134: Group sessions N=104: Individual formal hearing	II-I

[1]Significantly worse than the control group.

Table 2. SUMMARY OF DRIVER IMPROVEMENT PROGRAM EFFECTIVENESS (Continued)

Study	Significance Over Control Group Or Standard Group			Post Period (Months)	Treatment	Miscellaneous Comments KEY
	Acc.	Conv.	Both			
GROUP MEETINGS ONLY (Continued)						
Schlesinger & Travani (1967)	NS	NS	NS	18	N=221 males, white: 3 - 2 hr. sessions	II-J
				18	N=253 males, white: Control - no contact	
	NS	NS	NS	18	N=922 males, black: 3 - 2 hr. sessions	
			—	18	N=813 males, black: Control - no contact	
Schlesinger & Travani (1967)	NS	NS	NS	18	N=401 male, white: 1 hr.	II-K
				18	N=589 male, white: Control - no contact	
	NS	NS	NS	18	N=744 male, black: 1 hr.	
				18	N=933 male, black: Control - no contact	
	NS	NS	NS	18	N=390 male, white: Lecture	
	NS	NS	NS	18	N=704 male, black: Lecture	
Wisconsin DMV (1969)	NS	NS	-	13.6	N=15,708: 3 - 2 hr. sessions	II-L
				23.1	N=3,018: Control - "regular procedures"	
Harano & Peck (1971)	S*	S*	-	12	N=1776 males: 18 hr. traffic school	II-M
				12	N=1768 males: Control - fine only	
	NS	NS	-	12	N=244 females: 18 hr. traffic school	
				12	N=324 females: Control - fine only	
Owens (1967)	NS	NS	-	12,24	N=100: Fine & traffic school	II-N
	NS	NS	-	12,24	N=100: Fine & probation & traffic school	
	NS	NS	-	12,24	N=100: Fine & probation	
				12,24	N=100: Fine only	
Marsh (1973)*	NS	NS	-	24	N=1806: SIM	II-O
	NS	NS	-	24	N=1827: LIM	
	NS	S	-	24	N=1759: GEM	
	NS	S	-	24	N=1863: DIM	
	NS	S	-	24	N=1860: GAR	
				24	N=1535: Control - mail dummy contact	
Kaestner & Speight*	-	-	S	12	N=97: National Safety Council D.D.C.	Covered in text
				12	N=71: Control - no contact	

*Significant for given subgroups
*Studies not reported in Goldstein's 1973 review

Table 2. SUMMARY OF DRIVER IMPROVEMENT PROGRAM EFFECTIVENESS (Continued)

Study	Significance Over Control Group or Standard Group			Post Period (Months)	Treatment	Miscellaneous Comments KEY
	Acc.	Conv.	Both			
INDIVIDUAL HEARINGS ONLY						
Coppin, Peck, Lew & Marsh (1965)	NS	S	-	12,24 12,24	N=967: Short individual session N=967: Control - no contact	III-A
Marsh (1971)	NS NS S S	S S S S	- - - -	12 12 12 12 12	N=1432 males: Regular Individual Hearing (RIH) N=1408 males: Experimental Individual Hearing (EIH) N=1379 males: Control - dummy mail contact N=174 females: RIH N=160 females: EIH N=156 females: Control	Refer to II-C
Kaestner & Syring (1967a, 1967b, 1967c, 1968)	S S	S S	- -	12,24 12,24	N=613 males: Interview N=588 males: Control -- no contact	III-B
Kleinknecht (1969)	- - -	- - -	NS NS NS	6 6 6 6	N=63 males: Information + Restriction Penalty N=60 males: Information but no Restriction N=58 males: Information + Restriction but no penalty N=105 males: Standard probation or suspension	III-C
O'Neall & McKnight (1970)	-	-	NS	3 3	N=386: Individual interview N=253: Control - appeared & excused	Refer to II-G
Henderson & Kole (1967 a & b)	S S NS	S S NS	- - -	Combined experimental $\bar{X}$ 4.5 yrs Combined controls $\bar{X}$ 3.9 yrs	N=3226, over 60, 1 acc.: One day clinic N=1498, over 60, 1 acc.: Control - no contact N=2668, 2 or more acc.: One day clinic N=2003, 2 or more acc.: Control - no contact N=79, involved in fatal acc.: One day clinic N=69, involved in fatal acc.: Control - no contact	III-D
Wallace (1969)	-	-	S	6 6	N=80: Behavior modification treatment N=211: Control - no contact group combined with partial contact	Refer to II-D
Scott & Greenburg (1968)	NS	NS	NS	36 36	N=104: Individual formal hearing N=134: Group session	Refer to II-I

Table 2. SUMMARY OF DRIVER IMPROVEMENT PROGRAM EFFECTIVENESS (Continued)

Study	Significance Over Control Group or Standard Group			Post Period (Months)	Treatment	Miscellaneous Comments KEY
	Acc.	Conv.	Both			
INDIVIDUAL HEARINGS ONLY (Continued)						
Wisconsin DMV (1969)	S	S	-	17.1 23.1	N=15,363: Interview, re-exam, counseling N=3,018: Control - "regular procedures"	Refer to II-L
Temple & Ferguson (1958b)	NS	S	-	24 24	N=200: Interview (not clear) N=200: Control - no contact	III-E
Campbell (1958)	-	S	-	13.5 14.8	N=4621: Hearing + suspension or probation N=2769: Control - no contact	III-F
King (1960)	-	-	S	6-24 6-24	N=139: Re-exam + instruction N=139: Re-exam + probation	Refer to I-C
Marsh (1973)* (continuation of 1971 study)	NS NS	S S	- -	24 24 24	N=1432 males: Regular Individual Hearings N=1408 males: Experimental Individual Hearings N=1379 males: Control - dummy contact	Refer to II-O
Kaestner & Speight* (1974)	- -	- -	NS S	12 12 12	N=203: Suspension N=222: Probationary license N=199: Control - no contact	Covered in text

*Studies not reported in Goldstein's 1973 review

MISCELLANEOUS ADDITIONAL COMMENTS ON DRIVER IMPROVEMENT[1] STUDIES TABULATED IN TABLE 2

KEY: I. Warning Letters (W/L)

STUDY	COMMENTS
A. Temple & Ferguson (1958a)	1. Assignment procedures unknown. 2. Not much information available to evaluate.
B. Campbell (1958)	1. No random assignment; ex post facto matching involved. 2. Advisory letter group had 10% more mean months of exposure. 3. Groups compared only on prior points. Higher points for letter group. 4. No mention made as to how letters-returned were handled.
C. King (1960)	1. No information on how groups were selected. 2. Returned warning letters formed the no-letter control group. 3. Do not agree with Goldstein's conclusion that results are suggestive. 4. Possible biases associated with examiner's decisions. 5. Sample size small. 6. Equivalence of groups not clear. 7. Subsequent DMV actions not known.
D. Kaestner, Warmoth & Syring (1967)	1. No biases reported; however, only prior accidents, convictions and total involvement were considered. 2. Criterion is basically a conviction measure. 3. Age by letter interaction. Almost all of the letter effects due to positive effect on drivers under age 25. 4. Some of the significant differences could be attributable to the large number of a posteriori contrasts performed without additional protection level for increased experiment-wise error rate (e.g., Scheffe & Tukey techniques).
E. McBride & Peck (1969)	1. Very small biases found on age, marital status and prior driving record controlled through covariance analysis. 2. Control group sent postage-paid return card requesting verification of address (note: Goldstein did not comment). 3. Very large Ns.

KEY: II. Group Meetings Only

A. Coppin (1961)	1. One-third did not show--only those who appeared were included. 2. Random assignment, but significant difference between numbers in experimental and control groups not explained. 3. Experimentals older; no difference on prior violations or accidents, marital status, or type of license. 4. Interaction effects by age reported.
B. Coppin, Marsh & Peck (1965)	1. Random assignment, but controls worse on prior violations and accidents. 2. Forty-one percent of experimentals were no-shows; included in analyses. 3. Differential handling of treatments during post-period probably rendered the treatment effects conservative, although Goldstein did not find the author's arguments convincing.
C. Marsh (1971)	1. Random assignment; very small biases found and statistically adjusted. 2. Control group was sent a "dummy contact" so that unavailable subjects could be removed from the study. 3. Analyses included no-shows. 4. Very large Ns. 5. Some of claimed significance based on .20 alpha and no control of experiment-wise error for number of comparisons tested.

[1] State Driver Improvement Analysis - Vol II, J.P. McGuire, R.J. Bernstein et. al., Contract #DOT-HS-4-00967, November 1975, Public Systems Incorporated, Sunnyvale, California.

MISCELLANEOUS ADDITIONAL COMMENTS ON TABLE 2 (Continued)

KEY: II. Group Meetings Only (continued)

STUDY	COMMENTS
D. Wallace (1969)	1. Random assignment, but results biased due to eliminating no-shows from their respective treatments. 2. No-shows and excused subjects treated as experimental groups, which is improper. 3. One of the control groups was required to appear, then dismissed, which is more like a treatment than a control condition.
E. Kastelle & LeSeur (1965)	1. No-shows included in analysis. 2. Controls "drawn from same population as experimentals"; authors claim groups similar on age, prior violations and residence, but not clear whether assignment was completely random and no data given showing comparability. 3. Subjects who did not attend all of the sessions were dropped; possible source of bias.
F. Moore (1967)	1. More refined analysis and longer follow-up of same drivers as Kastelle & LeSeur (1956), and some additional research on new subjects. 2. No-shows removed from both groups by having the controls appear. Therefore, the controls were treated, though less extensively, than the experimental groups.
G. O'Neall & McKnight (1970)	1. Random assignment claimed, but no data shown on comparability. 2. No-shows excluded (same techniques as Moore). 3. Control group is really a treatment since they got a notice and were required to appear. 4. The only significant difference reported was that among the violations, the control group had significantly more persons with two or more points. However, this reviewer's calculations indicate that the significance-calculation was in error and did not even approach significance. The error resulted from the authors' basing their error term on the entire sample instead of just the failures, which is a much smaller number and results in a much larger error term. 5. The post-treatment period was only three months.
H. Henderson & Kole (1967c)	1. Random assignment after testing; no differences on age, prior record and exposure. 2. Controls came in and were tested. 3. All Ss had prior clinic treatments but continued to have accidents. They therefore represent a "hard core" group. 4. Surprisingly high attrition rates attributable to "record spoilage and other factors." The "other factors" are not explained but the size of the attrition and the fact that the rate for experimentals was significantly higher raises serious questions. Goldstein does not discuss implications of this latter attrition factor.
I. Scott & Greenberg (1968)	1. Groups matched on personal characteristics, but experimental had fewer prior violations. Assignment was not random and the assignment technique is not described. 2. Very small Ns and large attrition due to matching requirements and locating subjects. Attrition rate also was differential treatment. 3. Some suggestive evidence that treatment effects were moderated by personality characteristics and prior driving record, but no evidence of differential attitude change due to treatment.

MISCELLANEOUS ADDITIONAL COMMENTS ON TABLE 2 (Continued)

KEY: II. Group Meetings Only (Continued)

STUDY	COMMENTS
J. Schlesinger & Travani (1967): Revoked Driver Reinstatement Program	1. Random assignment; 4 of 55 variables significant; experimentals had more prior violations and shorter mean time to renewal. This number of differences could almost be due to chance. 2. No-shows removed from both control and experimental. 3. Probable bias due to differential non-renewal rate and removing non-renewees from data. Possible bias due to removing 650 subjects from experimental group because criminal record could not be checked. 4. Goldstein believes that there was a tendency to assign worse people to experimental treatment.
K. Schlesinger & Travani (1967): First-Time Habitual Violators	1. Random assignment; no evidence of bias except the probable bias introduced by removing no-shows from experimental groups but not from controls. 2. Some suggestive evidence that lecture was effective for whites but not blacks.
L. Wisconsin DMV (1969)	1. Claimed random assignment with checks on age, sex, residence. Comparison on prior record showed varying temporal periods. 2. Post-treatment data not comparable because of differential post-exposure. Conversion to 12-month period makes them more comparable, but not entirely so. 3. No-shows not discussed. 4. Contradictory evidence; controls lowest on mean violations and accidents, but highest on percentage involved.
M. Harano & Peck (1971)	1. Control condition was a court fine. 2. Treatment significant through various interaction effects. 3. Random assignment; substantial bias found and statistically adjusted. 4. Very large Ns.
N. Owens (1967)	1. Assigned in chronological order in blocks of 100. No further checks. 2. No check on group comparability. 3. Findings somewhat paradoxical in that traffic school had significant positive impact on violations in second year but not in first year. Some evidence that probationary restriction made traffic school less effective. 4. No-treatment conditions was actually a court fine.
O. Marsh (1973)	1. Follow-up analyses to the 1971 study; same random assignment and statistical refinement through analyses of covariance. 2. No-shows included and factorial hands-off condition for 1/2 of subjects through post 12-month period. 3. GEM became significant at $p \leq .10$ (two-tailed), but follow-up treatment became non-significant. 4. Follow-up treatment analyses weak and conservative due to the fact that less than 50% of the subjects who violated under the follow-up condition actually received a follow-up treatment. The means were directionally suggestive of a postive effect. 5. All analyses performed with males and females combined. Separate analyses would have been preferable. 6. Very large Ns.

MISCELLANEOUS ADDITIONAL COMMENTS ON TABLE 2 (Continued)

KEY: III. Individual Hearings Only

STUDY	COMMENTS
A. Coppin, Peck, Lew & Marsh (1965)	1. Not randomly assigned; matched retrospectively on prior record, age, sex and marital status. 2. Eleven percent and 15% of hearing cases were no-shows; included in analyses. 3. Comparability of results confounded by controls getting more subsequent hearings; but this tends to strengthen the positive findings since bias would favor the controls.
B. Kaestner & Syring (1967a, 1967b, 1967c & 1968)	1. Random assignment; no difference on prior violation or accident. 2. Significant differential attrition rate raises the possibility of bias. 3. No-shows apparently dropped from analysis.
C. Kleinknecht (1969)	1. Random assignment with some attrition; no differences on age and prior entries. 2. Extremely bad drivers and mostly young. 3. Extremely few cases and extremely little post-treatment exposure.
D. Henderson & Kole (1967a & 1967b)	1. Random assignment claimed, but the number of biases found suggest some more random selectivity. 2. Significance for experimentals in post-period even despite worse prior records and longer exposure. 3. It was not clear why post-treatment exposure differences occurred. 4. Cases were selected because of accidents not violations or points. 5. No data reported on the comparability of the groups by area of residence. 6. No-shows excluded and no data reported on number. The authors "believe" it was less than 5%.
E. Temple & Ferguson (1958b)	1. Not clear whether letter was complete treatment or whether it was invitation to an interview; subsequent information confirms the latter. 2. Treatment comparability figures not reported. 3. Same with post-DMV actions. 4. No-shows not mentioned.
F. Campbell (1968)	1. Assignment not random; drivers with worst records tended to get more severe treatments. 2. Treatment is hearing plus suspension or probation; no-shows were suspended. 3. Differences still significant in favor of treatment groups after adjustments for differences in temporal exposure. 4. Lack of data on comparability of groups on other variables and the assignment process renders the large treatment effects equivocal.

APPENDIX G

Evaluation of the Weighted Caseload Technique and Trial Court Costs

Department of Finance

April, 1975

State of California

Memorandum

Date : April 30, 1975

To : Mr. Edwin W. Beach
Assistant Director
Department of Finance

From : Department of Finance
Program Evaluation Unit

Subject: Weighted Caseload Technique and Trial Court Costs

The report which follows was prepared by William Banks, Kenneth Binning, and Jack Smith in response to your request for an evaluation of Arthur Young and Company's weighted caseload technique, as it pertains to the trial court system. Cost/output data has also been developed for California for Fiscal Year 1973-74 and previous time periods and interstate comparisons have been developed.

The substance of the report may be summarized as follows:

1. Measurement error may significantly affect the accuracy of the weighted caseload system.

2. The weighted caseload system is the best method presently available for estimation of hours worked by judges.

3. Estimates of working hours per day range from 6.80 for Superior Court judges in districts with 11 judges or greater to 5.30 for judges in 1-2 judge districts.

4. There is no evidence of substantive increases or decreases in judicial productivity based upon weighted or unweighted filings and dispositons.

5. Cost per disposition is increasing faster in California than in other states and faster than inflation alone can explain.

6. Expenditure per capita for judicial activities is high in California relative to other states.

7. California has fewer judges per capita than most states and pays its judges more than all states except New York.

8. In California, cost per disposition and cost per judge have been increasing more rapidly in the municipal and justice courts than in the superior courts.

9. Revenue should not be considered a viable measure of courtroom performance.

JUDICIAL WORKLOAD

Weighted Caseload System

The weighted caseload system is the method used by the California Judicial Council to measure the workload of judges. The weighted caseload system assigns numerical weights equal to the average number of minutes (in the courtroom and chambers outside the court facilities) spent by judges on different kinds of cases (e.g., Criminal, Family Law, Eminent Domain). Assigned weights are based upon a survey conducted for the Judicial Council by Arthur Young and Company. Judges in the 40 courts surveyed filled out time and workload reporting forms from which the final weighted caseload averages were derived. However, the accuracy of the survey is brought into doubt due to the fact that the number of dispositions indicated by the survey differed from Judicial Council counts. This difference was great enough that disposition counts on the survey reporting forms were ignored whenever Judicial Council counts were available. We believe that information such as the time spend during the various phases, and for various actions during an individual case, is unlikely to be reported more accurately than dispositional status. We would, therefore, hesitate to rely upon the absolute weights established by the weighted caseload system in determining the need for new judgeships. The existence of a sampling error is acknowledged in the text of the Arthur Young report but measurement error is ignored and the ranges for estimates of judicial staffing requirements at given levels of confidence must be enlarged accordingly.

Despite its limitations, the weighted caseload system does have some value. At the present time it is the best method available for estimating hours worked by judges. Also, by using the relative weights of different kinds of cases (e.g., one Juvenile Delinquency case equals two Family Law cases equals 4.27 Civil Petitions), one is able to adjust for varying case mixes. The average criminal case requires much more time than the average civil case. If the number of criminal cases increases, while the total number of cases is unchanged, total workload will increase. The weighted caseload system provides a mechanism for dealing with such changes.

Workload of Judges

Table I (attached), which is based on data from the Arthur Young report, shows estimates of Superior and Municipal Court judges working time. For clarity we will elaborate only on that part of the table relating to Superior Court judges in 3-10 judge districts. All of the following estimates are based upon 215 working days per year. Judges in 3-10 judge Superior Court districts spend 5.05 hours per day and 27.12 man-weeks per year (man-weeks based on a 40-hour work week) on case-related activity; if, in addition to case-related activity, we consider court administration, assignment to other courts and other judicial activities, the time increases to 6.18 hours per

day and 33.21 man-weeks per year. Excluded entirely from the estimates are all community activities expected of a judge which are nonjudicial in nature.

Input and Output of the System

Table II (attached), which is based upon Judicial Council information, shows the number of judges, filings, dispositions, and cases pending for the Superior Court system in 1971-72, 1972-73, and 1973-74. The total number of filings increased 1.98 percent from 1971-72 to 1972-73 and 5.53 percent from 1972-73 to 1973-74. The total number of dispositions increased 1.62 percent from 1971-72 to 1972-73 and 2.94 percent from 1972-73 to 1973-74. The number of judges increased 1.27 percent from 1971-72 to 1972-73 and .2 percent from 1972-73 to 1973-74 and the number of cases pending decreased .56 percent from 1971-72 to 1972-73 and .52 percent from 1972-73 to 1973-74. If we take the mix of cases into account and assign weights, the adjusted filings increased 2.71 percent from 1971-72 to 1972-73 and the adjusted dispositions increased .51 percent in the same period. Irrespective of the analytical method, the dispositions and filings seem to be increased at a very slow rate. The number of judges is also increasing slowly and the backlog is decreasing slightly. There is no evidence of substantive increases or decreases in productivity.

A backlog of cases awaiting trial is an inevitable byproduct of a non-instantaneous judicial system. The mere existence of a backlog is not necessarily a problem. To make such a determination one must analyze the magnitude of the phenomena and note whatever trends are occurring. According to the Judicial Council statistics, the number of cases awaiting trial in Superior Courts peaked in June 1970 for criminal cases and June 1971 for civil cases. The criminal backlog has fallen from 9916 to 6582 in the period from June 1970 to June 1974. The civil backlog has decreased from 83,483 to 74,285 in the period from June 1971 to June 1974. It is plain that the number of cases awaiting trial is decreasing; the question of whether the present magnitude is unacceptable is left unanswered.

Another unresolved issue concerning backlog is the fact that filings continually exceed dispositions in both civil and criminal cases without being reflected in the total number of cases awaiting trial. The Judicial Council addresses this subject in its 1973 report: "Filings have exceeded dispositions in every year for which comparable figures exist and this relationship is to be expected since: (1) dispositions can never exceed filings over an extended period; (2) dispositions necessarily lag behind filings; (3) most important, many cases are filed that are later settled or abandoned without being formerly dismissed, remaining inactive on court records without becoming part of real workload backlog." We admit that such an explanation might explain the phenomena for civil cases but criminal cases must be resolved one way or the other. Table III (attached) shows the number of criminal filings and dispositions

CONTINUED

2 OF 4

in Superior Court for the years 1962-63 through 1973-74. The number of filings exceed the number of dispositions by 65,618 in this time period yet the number of cases awaiting trial at June 30, 1974 was only 6,582. This difference may, in part, be explained by those cases where defendants have "jumped" bail and a date for trial is never set. However, assuming the magnitude of these occurrences is not great, some cases are being disposed of without being reported or the number of filings is overstated. Regardless of which situation obtains, the Judicial Council statistics may be in error.

JUDICIAL COSTS: INTERSTATE COMPARISONS

Based largely on summary data published by the U.S. Department of Justice and direct contact with the court administrative offices of several states, we have made a number of interstate comparisons of expenditures for judicial activities. Broad conclusions following from these comparisons are: (1) cost per disposition is increasing faster in California than in other states and faster than inflation alone can explain; (2) expenditure per capita for judicial activities is high in California relative to most states; (3) State government in California accounts for a smaller proportion of total expenditures for judicial activities than in all other states; (4) California has fewer judges relative to population than most states; and (5) California pays its judges more than all states except New York.

Cost Per Disposition

Table IV (attached) compares the cost per disposition in California with four other states: Pennsylvania, Texas, Illinois, and Oregon for the years 1968-69 through 1971-72 (the most recent year for which summary data was available). In California the cost per disposition increased approximately three times faster than the Consumer Price Index, (CPI), a measure of general inflation in the economy. The cost per disposition in Pennsylvania and Illinois also increased faster than the CPI. The cost per disposition in Texas increased less than the CPI and actually decreased in Oregon over the two years for which we have data. (Other states were contacted, but were unable to provide us with data in time for inclusion in this memo).

At least four factors might contribute to the relative increases in cost per disposition:

1. Inflation in the legal field and court-related activities may be greater than in the general economy as reflected by the CPI.

2. The mix of dispositions may have changed such that the later years are characterized by a higher proportion of cases which require large amounts of court time and expenditure.

3. Changes in court procedures and legal requirements may have increased the amount of time and expenditure necessary to dispose of cases.

4. The courts may have become less efficient.

While Table IV displays relative trends in cost per disposition for each of the five states, we stress that direct comparison of cost per disposition is probably not valid. Each state has its own definition of what a "disposition" is. In California there may be multiple dispositions of a single case, as it is transferred between courts, while in Pennsylvania a case is considered "disposed" only when it is ultimately resolved by the court system, and there can be only one

disposition per case. Thus, the cost per disposition in Pennsylvania is artificially high when compared to California or other states.

Expenditure per Capita for Judicial Activities

Table V (attached) compares expenditure per capita in California and six other states. Direct comparison is more valid in Table V than in Table IV, since the problem of differing definitions of "disposition" is no longer present. Next to New York, California has the highest expenditure per capita for judicial activities. This indicates that the judicial system in California is relatively expensive, but does not consider differences in the "quality of justice", or procedural variations, among the states.

State Portion of Expenditures for Judicial Activities

Table VI (attached) compares the percentage of expenditures borne by State Government in California and six other states for the years 1968-69 through 1971-72. In California, the State has consistently provided a smaller percentage of total expenditure for judicial activities than any of the six states shown in Table VI. In fact, the percentage contribution of the State of California is less than in any of the forty-nine other states.

Capital Expenditures on Judicial Activities

It may be of interest to note the level of capital expenditure on Judicial activities. Table VII provides this information for California and six other states for the period 1968-69 through 1971-72. Table VII shows that capital expenditures have fluctuated greatly from year to year and in 1971-72 decreased over the previous year for four of the seven states, including California. This data represents yearly expenditure for capital only and should not be construed to represent actual capital costs for individual years.

Number of Judges

Table VIII shows the number of authorized trial judgeships as of July 1, 1971 for California and twelve other states, and the number of authorized judges per 100,000 population. In 1971, California had 5.0 trial judges per 100,000 people. California had fewer judges per 100,000 inhabitants than ten of the other states included in Table VIII. The range went from 4.3 judges per 100,000 population in Massachusetts to 21.5 judges per 100,000 population in New Mexico. These comparisons appear indicative of a relatively greater caseload per judge in California and perhaps higher utilization of commissioners and referees in California.

Salaries of Judges

Table IX (attached) compares the salaries of judges in the fifty states at three court levels: supreme courts, intermediate appellate courts, and general trial courts. In all three categories, California ranks second only to New York in salaries paid. Associate Supreme Court justices in California are paid $51,615 compared to a national average of $36,117. At the intermediate appellate court level, California pays $48,389 compared to a national average of $36,763. At the general trial court level, Superior Court justices in California are paid $40,322 compared to a national average of $32,485. In addition, Table IX shows

that United States Supreme Court Justices are paid $60,000 per year and U.S. District Court judges are paid $40,000 per year. Finally, it is noted that as of September 1, California judges will earn the following annual salaries:

Chief Justice, State Supreme Court	$61,609
Associate Justice, State Supreme Court	57,985
Justice, State Court of Appeal	54,361
Judge, Superior Court	45,299
Judge, Municipal Court	41,677

CALIFORNIA TRIAL COURT COSTS, REVENUE, AND COST/UNIT COMPARISONS

A more detailed review of trial court costs in California can be made by utilizing information published by the State Controller's Office[1] and state budgets. Table A shows reported trial court costs for fiscal years 1963-64, 1967-68, and 1973-74 by reporting category. Because reporting is not uniform, we cannot be certain that costs reported for a particular court exclude such items as jury costs and law libraries. However, District Attorneys, Public Defenders, County Clerks, Grand Juries, Marshalls and Constables are excluded from all costs; capital costs are likewise excluded.

TABLE A

California Trial Court Costs [a]

Cost Categories	Reported Costs 1963/1964 (in millions)	Reported Costs 1967/1968 (in millions)	Percent Change	Reported Costs 1973/1974 (in millions)	Percent Change	Percent Change 1963/1964
1. Justice Courts	$4.8	$5.8	+20%	$14.4	148%	198%
2. Municipal Courts	$19.5	$30.2	+55%	$63.8	111%	227%
3. Superior Courts	$14.9	$22.9	+54%	$49.1	114%	230%
4. "Other Court Costs"	$2.9	$4.2	+44%	$4.6	10%	56%
5. State Costs	$6.0*	$8.4	+40%	$17.8	112%	197%
6. Total Costs	$48.1	$71.5	+49%	$150.7	109%	213%
Consumer Price Index (California)	92.7	102.2	+10%	136.9	+34%	+48%

* Estimated

[a] Data are reported by counties in differing format; therefore, costs represented as being applicable to an individual court by one county may include costs represented in "other court costs" by another county. "Other court costs" include jury costs, jury commissioners, law libraries, court reporters and "other costs".

It should be noted that total costs data in Tables A and B are not comparable with the California data in Table V, since Table V includes categories (primarily appellate courts) not included in Tables A and B.

[1] State of California, Office of the Controller, Annual Report of Financial Transactions concerning Counties of California, Fiscal Years 1963-64; 1967-68; 1973-74.

These data indicate that trial court costs in California have risen dramatically since 1963-64 and that the major increases have occurred in the last five years. Part of these increased costs is related to an increase in system size which is in turn related to population increase. In order to remove this component, certain cost/unit of output measures were developed. Table B indicates these basic measures and arrays them by court type.

TABLE B

Cost/Unit Comparisons

Court	1953-64	1967-68	Percent Change	1973-74	Percent Change	Percent Change 1963/64-1973/74
1. Superior [a]						
A. Cost/Judge	$68,756	$91,590	33%	$149,525	63%	117%
B. Cost/Judicial positions [b]	--	$78,109	14%	$124,735	60%	81%
C. Cost/Disposition	$70.98	$92.42	30%	$148.88	61%	110%
2. Municipal						
A. Cost/Judge	$76,656	$99,163	29%	$167,959	69%	119%
B. Cost/Judge equivalent [c]	$77,262	$95,712	24%	$157,591	65%	104%
C. Cost/Disposition	$2.56	$3.31	29%	$5.67	71%	121%
D. Cost/Non-parking Disposition	$5.23	$6.88	32%	$13.90	102%	166%
3. Justice						
A. Cost/Court	$16,758	$22,868	36%	$65,087	185%	288%
B. Cost/Non-parking Disposition	$6.16	$6.99	13%	$18.11	159%	194%
Consumer Price Index (California)	92.7	102.2	+10%	136.9	+34%	+48%

[a] Includes State shares of Superior Court system.
[b] Includes referees and commissioners.
[c] Adjusted for differential work assignment.

The data presented in Table B illuminate two major concerns. The first is the rapidly increasing cost of the trial court system. By any measure used, cost increases have been well in excess of the consumer price index, and in fact appear to have exceeded the consumer price index for medical care from 1967-1974. The second concern is the greater increase in costs per disposition for municipal and Justice Courts relative to Superior Courts.

Revenue as a Measure of Productivity

Table C indicates trial court revenues reported for the fiscal years 1963-64, 1967-68, and 1973-74. Revenues have followed the trend of costs by exceeding the Consumer Price Index (even after adjustment for a 15% population increase); however, the bulk of court related revenues are generated from vehicle code fines and parking violations which, of all categories of revenue, can least be attributed to actions of the court.

TABLE C

Trial Court Related Revenue

Revenue Type	1963-64 (in millions)	1967-68 (in millions)	Percent Change	1973-74 (in millions)	Percent Change	Percent Change 1963/64 - 1973/74
1. County [a]						
A. Vehicle Code Fines	$23.1	$36.8	+59	$42.3	+15	+83
B. Other Court Fines [b]	$6.0	$6.8	+13	$16.4	+140	+172
C. Forfeitures and Penalties	$2.8	$3.5	+23	$7.0	+99	+145
2. Municipal						
A. Vehicle Code Fines	$32.9	$42.5	+29	$58.6	+38	+78
B. Other Court Fines [b]	$10.2	$12.3	+21	$22.7	+85	+123
C. Other Penalties	$1.3	$0.21	-519	$0.13	-62	-900

[a] Includes city and county of San Francisco.
[b] Primarily parking meter violations.

Revenue is not a meaningful measure of court productivity. Any meaningful comparison of cost and revenue would have to include all activities generating cost and revenue. These activities would include police forces and penal systems as well as the courts and their officers. If all costs are considered, it is highly unlikely that court revenues would exceed costs.

Certain categories of revenue such as forfeiture of bail may be viewed as measures of ineffective judicial action. Forfeiture of bail, in a criminal case, exclusive of traffic violations, could be considered evidence of inappropriate bail setting, while low forfeitures could just as easily reflect excessively severe bail setting policies. For these reasons as well as other philosophical considerations, revenue should not be considered a viable measure of courtroom performance.

RICHARD RAY
Chief
Program Evaluation Unit

RR:bml

TABLE I

Workload of Superior and Municipal Court Judges

Type of Court		Case related alone	Plus Court administration assignment to other courts and other judicial activities
Superior Courts			
1-2 Judge Districts	Hours per day worked	4.33	5.30
	Man weeks worked per year	23.25	28.59
3-10 Judge Districts	Hours per day worked	5.05	6.18
	Man weeks worked per year	27.12	33.21
11 and up	Hours per day worked	5.55	6.80
	Man weeks worked per year	29.83	36.53
Municipal Courts	Hours per day worked	4.88	6.54
	Man weeks worked per year	26.25	35.16

Information from Judicial Weighted Caseload System Project; May, 1974; Arthur Young and Company.

Man weeks based on 40-hour work week.

TABLE II

Superior Courts
Number of Judges, Filings, Dispositions, Cases Pending

Year	Judges	Filings			Dispositions			Cases Pending *		
		Civil	Criminal	Total	Civil	Criminal	Total	Civil	Criminal	Total
1973-74	478	507,583	54,479	562,062	430,492	49,570	480,062	74,285	6,582	80,867
1972-73	477	470,986	61,605	532,591	411,496	54,840	466,366	74,190	7,099	81,289
1971-72	471	456,769	65,487	522,256	397,556	61,372	458,928	74,324	7,426	81,750

1971-72, 1972-73 figures from 1974 Judicial Council Report.
1973-74 figures from Judicial Council statistical office.
* At end of fiscal year.

TABLE III

California Superior Court Criminal Filings, Dispositions, and Backlog[1/]

Year	Criminal Filings	Criminal Dispositions	Criminal Cases* Awaiting Trial
1973-74	54,479	49,570	6,582
1972-73	61,605	54,840	7,099
1971-72	65,487	61,372	7,426
1970-71	76,426	69,032	8,863
1969-70	71,422	63,554	9,916
1968-69	68,159	58,510	8,877
1967-68	55,067	47,348	6,476
1966-67	46,537	40,786	5,145
1965-66	42,992	39,145	4,395
1964-65	38,010	35,668	3,576
1963-64	35,618	32,650	2,821
1962-63	35,240	32,949	4,615
Total	651,042	585,424	

* End of Fiscal Year

1/Source: Judicial Council, Annual Reports for 1965, 1966, 1968, 1970, 1972, 1974, and unpublished information obtained from the Judicial Council's statistical office.

TABLE IV

Increases in Judicial Cost/Disposition

	Cost Per Disposition 1/					
	1968-69	1969-70	1970-71	1971-72	Percent Change over four years 2/	Percent Change in U.S. Consumer Price Index 3/
California	$ 52	$ 63	$ 73	$ 77	+48.1%	15.2%
Pennsylvania	n/a	$310	$337	$359	+15.8%	9.0%
Texas	$161	$161	$168	$172	+ 6.8%	15.2%
Illinois	$ 55	$ 60	$ 64	$ 74	+34.5%	15.2%
Oregon	n/a	n/a	$ 48	$ 47	- 0.2%	3.8%

1/ Disposition data for this calculation was obtained from annual reports of the Judicial Council for California and by telephone contact with court administrative offices for the other states. The disposition data includes dispositions rendered by all levels of the court system. The data were adjusted to exclude traffic and parking violations.

2/ Three years for Pennsylvania and two years for Oregon.

3/ The percentage reflects the time period by State for years shown with available data.

TABLE V

Expenditure per Capita for Judicial Activities

State/Year	Population [a] (thousands)	Total Expenditure for Judicial Activities	Expenditure per Capita
California			
1971-72	20,286	$178,668	$ 8.81
1970-71	20,016	170,051	8.50
1969-70	19,711	140,372	7.12
New York			
1971-72	18,349	188,738	10.29
1970-71	18,260	170,894	9.36
1969-70	18,105	153,156	8.46
Pennsylvania			
1971-72	11,901	83,496	7.02
1970-71	11,816	76,903	6.51
1969-70	11,741	61,673	5.25
Texas			
1971-72	11,428	49,486	4.33
1970-71	11,241	46,389	4.13
1969-70	11,045	40,642	3.68
Illinois			
1971-72	11,182	73,858	6.61
1970-71	11,125	65,648	5.90
1969-70	11,039	59,063	5.35
Oregon			
1971-72	2,139	14,301	6.69
1970-71	2,102	12,538	5.96
1969-70	2,062	10,005	4.85
Arizona			
1971-72	1,862	12,489	6.71
1970-71	1,792	11,959	6.67
1969-70	1,737	10,347	5.96

[a] Source: U.S. Bureau of the Census, Statistical Abstract of the U.S. for 1974.

TABLE VI

State and Local Proportions of Expenditures for Judicial Activities[a/]

State/Year	State Share of Expenditures for all Judicial Activities
California	
1971-72	11.5%
1970-71	10.9%
1969-70	12.0%
1968-69	13.4%
New York	
1971-72	20.7%
1970-71	21.2%
1969-70	21.8%
1968-69	20.3%
Pennsylvania	
1971-72	30.6%
1970-71	22.2%
1969-70	22.0%
1968-69	16.2%
Texas	
1971-72	20.7%
1970-71	18.4%
1969-70	20.5%
1968-69	18.8%
Illinois	
1971-72	32.4%
1970-71	32.9%
1969-70	35.0%
1968-69	33.1%
Oregon	
1971-72	26.5%
1970-71	27.0%
1969-70	22.9%
1968-69	18.0%
Arizona	
1971-72	13.5%
1970-71	13.3%
1969-70	14.0%
1968-69	12.4%

[a/] Source: U.S. Department of Justice, Law Enforcement Assistance Administration, Expenditure and Employment Data for the Criminal Justice System. Annual reports for 1968-69 through 1971-72.

TABLE VII

Capital Outlays on Judicial Activities [a/]
(millions of dollars)

State	1968-69	1969-70	Percent Increase over previous yr.	1970-71	Percent Increase over previous yr.	1971-72	Percent Increase over previous yr.
California	$ 846	$15,558	1,745.2%	$26,644	71.3%	$18,930	-29.0%
State	40	54	35.0%	117	116.7%	25	-78.6%
Local	806	15,504	1,823.6%	26,527	71.1%	18,905	-28.7%
New York	3,657	6,365	74.1%	10,024	57.5%	12,384	23.5%
State	104	122	17/3%	98	-19.7%	179	82.7%
Local	3,553	6,243	75.7%	9,926	59.0%	12,205	23.0%
Pennsylvania	202	649	221.3%	1,454	124.0%	1,030	-29.2%
State	--	--	--	--	--	--	--
Local	202	649	221.3%	1,454	124.0%	1,030	-29.2%
Texas	2,231	1,935	-13.3%	1,040	-46.3%	638	-38.7%
State	4	2	-50.0%	9	350.0%	31	244.4%
Local	2,227	1,933	13.2%	1,031	-46.7%	607	-41.1%
Illinois	235	370	57.4%	398	7.6%	757	90.2%
State	85	134	57.6%	153	14.2%	144	-5.9%
Local	150	236	57.3%	245	3.8%	613	150.2%
Oregon	163	65	-60.1%	99	52.3%	80	-19.2%
State	--	--	0	--	--	--	--
Local	163	65	-60.1%	99	52.3%	80	-19.2%
Arizona	411	378	-8.0%	294	-22.2%	373	26.9%
State	40	61	52.5%	26	-57.4%	58	123.0%
Local	371	317	-14.5%	268	-15.5%	315	17.5%

[a/] Source: U.S. Department of Justice, Law Enforcement Assistance Administration, Expenditure and Employment Data for the Criminal Justice System. Annual reports for 1968-69 through 1971-72.

TABLE VIII

Population and Authorized Trial Judgeships, July 1, 1971, Selected States

	1971 [a] Population (thousands)	Courts of General Jurisdiction*	Courts of Limited Jurisdiction*	Total [b]	Number of Judges per 100,000 Population
California	20,286	438	575	1,013	5.0
New York	18,349	337	2,953	3,290	17.9
Pennsylvania	11,901	234	623	857	7.2
Texas	11,428	216	1,464	1,680	14.7
Illinois	11,182	605	--	605	5.4
Ohio	10,739	291	487	778	7.2
Michigan	8,996	135	316	451	5.0
Florida	7,025	137	650	787	11.2
New Jersey	7,305	168	655	823	11.3
Massachusetts	5,762	46	202	248	4.3
Oregon	2,139	61	203	264	12.3
Arizona	1,862	54	182	236	12.7
New Mexico	1,022	26	194	220	21.5

[a] Source: U.S. Bureau of the Census, Statistical Abstract of the U.S. for 1974.
[b] Source: U.S. Bureau of the Census, National Survey of Court Organization, 1973.
* These figures represent the assumption that there is one judge per court.

TABLE IX

JUDICIAL SALARIES IN APPELLATE AND TRIAL COURTS[a/]

State	Supreme Court	Intermediate Appellate Court	General Trial Court	Date of Last Salary Change
Alabama	$33,500	$33,000	$25,000 (32,500)	1/1/75
Alaska	44,000		40,000	5/1/74
Arizona	37,000	35,000	33,000	1/6/75
Arkansas	27,500		25,000	7/1/74
California	51,615	48,389	40,322	9/1/74
Colorado	35,000	32,000	28,000	7/1/73
Connecticut	36,000		34,500	7/1/74
Delaware	38,000		35,000	6/1/74
Florida	40,000	38,000	36,000	1/1/75
Georgia	40,000		32,500 (44,600)	6/1/74
Hawaii	32,670		30,250	7/1/70
Idaho	30,000		27,000	7/1/74
Illinois	42,500	40,000	30,000 (37,500)	1/6/75
Indiana	29,500	29,500	26,500	1971
Iowa	33,000		29,000	7/1/74
Kansas	32,500		27,500 (30,032)	1/13/75
Kentucky	31,500		26,000	Acts of 1974 legislature
Louisiana	37,500	35,000	(32,000)	9/1/74
Maine	26,000		25,500	4/1/74
Maryland	42,800	40,100	38,000	7/1/74
Massachusetts	40,788	37,771	36,203	1/1/74
Michigan	43,500	41,961	26,500 (41,759)	1/1/75
Minnesota	36,500		32,000	7/1/73
Mississippi	34,000		30,000	7/1/74
Missouri	31,500	30,000	28,000	10/13/72
Montana	27,000		25,000	7/1/74
Nebraska	35,500		32,500 (34,000)	1/1/75
Nevada	35,000		30,000	1/1/75
New Hampshire	33,800		33,696	6/1/74
New Jersey	48,000	45,000	40,000	6/28/74
New Mexico	29,500	28,000	27,000	2/1/75
New York	60,575	51,627	48,998	1/1/75
North Carolina	38,000	35,500	30,500	7/1/73
North Dakota	28,000		26,000	1/1/75
Ohio	40,000	37,000	34,000	1972
Oklahoma	30,000	26,000	25,000	7/1/74
Oregon	32,000	31,000	29,000	7/1/74
Pennsylvania	50,000	48,000	40,000	12/1/72
Rhode Island	33,000		31,000	5/26/74
South Carolina	36,380		36,380	7/1/74
South Dakota	28,000		26,000	7/1/74

[a/] Source: National Center for State Courts, Quarterly Survey of Judicial Salaries in State Court Systems, March 1975.

State	Supreme Court	Intermediate Appellate Court	General Trial Court	Date of Last Salary Change
Tennessee	$39,330	$36,052	$32,775	9/1/74
Texas	40,000	35,000	25,000 (38,00)	9/1/73
Utah	24,000		22,000	7/1/73
Vermont	29,900		25,800	7/1/74
Virginia	40,300		29,900 (40,200)	7/1/74
Washington	34,825	31,650	28,500	1/1/74
West Virginia	32,500		26,000	1973
Wisconsin	39,726		26,296 (35,296)	1/1/75
Wyoming	30,000		27,500	1/1/75
Disctrict of Columbia	38,250		36,000	N/A
Federal System	60,000		40,000	N/A
Commonwealth of Puerto Rico	32,000		26,000	7/31/74
National Average	36,117	**36,763**	32,485	N/A

APPENDIX H

Opinion Survey Instruments

Field Office code _ _ _ (1-3)

Field Office Name_____

DEPARTMENT OF MOTOR VEHICLES

TRAFFIC CITATION

PROCESSING QUESTIONNAIRE

The Department of Motor Vehicles is interested in learning the driving public's attitude about a new program being studied. Currently, if a person receives a traffic ticket, he must contact the court in the location where the ticket was received. This new program would allow a person receiving a ticket to go to a Department of Motor Vehicles office anywhere in the state to pay his fine. His case would be heard by a traffic safety person who is legally trained, but not a lawyer. If he did not like the Department of Motor Vehicles decision, he would then go to the court for review. In other words, if you get a ticket, you would go to the Department of Motor Vehicles rather than the court.

We are interested in your frank and honest answers about this new system, but we do not want to identify you as an individual. Therefore, do not write your name on this questionnaire. If you do not know an answer, make a choice that best describes your feelings.

This is not a test and will not affect your drivers license renewal.

Please mark only one answer for each question.

Thank you for your cooperation.

1. Have you heard or read anything about this new program prior to this survey?

Yes..... 1
No..... 2 (4)

2. Where did you hear or read about this?

Newspaper..... 1
Another person..... 2
Radio..... 3
Television..... 4
Magazine..... 5
Never heard about it..... 6 (5)

3. Do you feel less serious traffic tickets should be taken out of the courts and handled by:

Department of Motor Vehicles hearing officer	1	(6)
Another agency	2	
Or leave as is	3	
Improve the current court system	4	

4. Do you feel a legally trained Department of Motor Vehicles hearing officer would be as fair as a judge?

Yes	1	(7)
No	2	

5. Would you prefer a lawyer rather than a traffic safety hearing officer who was legally trained to hear your case?

Yes	1	(8)
No	2	

6. Would you still prefer a lawyer if the cost would result in higher taxes or fines?

Yes	1	(9)
No	2	
Still prefer traffic safety hearing officer who is legally trained	3	

7. Have you ever appeared at a Department of Motor Vehicles hearing?

Yes	1	(10)
No	2	

8. If the Department of Motor Vehicles was handling traffic tickets and you received a citation, would you most likely:

Mail in the fine	1	(11)
Pay fine in person	2	

9. Approximately how many moving traffic citations have you had in California within the last 5 years?

None..... 1
1 - 2..... 2
3 - 4..... 3
5 or more..... 4 (12)

10. When you received a citation, did you usually:

Appear in court and plead guilty..... 1
Pay a fine only (by mail or to a clerk)..... 2
Appear in court and plead not guilty..... 3
No citations..... 4 (13)

11. If you have ever appeared in traffic court, please describe your most typical experience:

Very hurried..... 1
Somewhat hurried..... 2
About average..... 3
Somewhat unhurried..... 4
Very unhurried..... 5
Never appeared in traffic court..... 6 (14)

12. If you have ever appeared in traffic court, please describe the fairness of your penalty:

Very fair..... 1
Somewhat fair..... 2
Somewhat unfair..... 3
Very unfair..... 4
Never appeared in traffic court..... 5 (15)

13. Usually, if you paid the fine, did you do so because:

You were guilty..... 1
You were not guilty but did not have time to fight the ticket..... 2
No citations..... 3 (16)

14. If you usually pleaded guilty, and appeared before a judge, what were the results of your appearance?

Full fine or penalty was imposed..... 1
A reduced fine or penalty was imposed..... 2
Sentence was suspended..... 3
Ticket was dismissed..... 4
Was required to attend traffic school..... 5
No citations..... 6 (17)

15. If you were pleading not guilty to a traffic citation would you rather have the police officer:

Present at your hearing.....	1	(18)
Not present at your hearing.....	2	

16. If the police officer was not present should he:

Submit a statement of what happened.....	1	(19)
Submit nothing just the ticket.....	2	
Send some other officer to represent him.....	3	

17. Generally, do you feel appearing in court will reduce your penalty?

Yes.....	1	(20)
No.....	2	

18. In my opinion, people with bad driving records should pay higher fines:

Yes.....	1	(21)
No.....	2	
No opinion.....	3	

19. Hearings and fines for moving violations should be the same for everyone in all areas of the state:

Yes.....	1	(22)
No.....	2	
No opinion.....	3	

20. Juveniles should be treated in the same manner as adults for moving violations.

Yes.....	1	(23)
No.....	2	

21. Do you feel over the years that the procedures for handling traffic cases in the courts have:

Improved.....	1	(24)
Stayed the same.....	2	
Gotten worse.....	3	
Not familiar with procedures.....	4	

The following questions are for statistical purposes only:

22. Your age

Under 20 years..... ☐ 1
20 - 29..... ☐ 2
30 - 39..... ☐ 3
40 - 49..... ☐ 4
50 - 59..... ☐ 5
60 and over..... ☐ 6

(25)

23. Sex

Male..... ☐ 1
Female..... ☐ 2

(26)

24. What is your approximate family income per year?

0 - $6000..... ☐ 1
$6000 - $8000..... ☐ 2
$8000 - $10,000..... ☐ 3
$10,000 - $15,000..... ☐ 4
$15,000 - $25,000..... ☐ 5
$25,000 or over..... ☐ 6

(27)

25. Approximate miles you drive per year:

Less than 2500..... ☐ 1
2500 - 7500..... ☐ 2
7501 - 12,500..... ☐ 3
12,501 - 17,500..... ☐ 4
17,501 - 22,500..... ☐ 5
Over 22,500..... ☐ 6

(28)

26. What is the highest grade you completed in school?

Less than 9th grade..... ☐ 1
Some high school..... ☐ 2
High school graduate..... ☐ 3
Some college..... ☐ 4
2 year college degree..... ☐ 5
4 year college degree..... ☐ 6
Graduate work..... ☐ 7

(29)

Thank you!

Field Office code

Field Office Name

DEPARTAMENTO DE VEHÍCULOS DE MOTOR

CUESTIONARIO DEL PROCESO DE CITACIONES DE TRÁFICO

El Departamento de Vehículos de Motor está interesado en estudiar la atitud del público motorista acerca de un nuevo programa que está siendo estudiado. En el presente, si una persona recibe una citación de tráfico, el debe comunicarse con la corte en la localidad en que la citación fue recibida. Este nuevo programa facilitará a la persona que recibe la citación que pague su multa en cualquiera de las oficinas del Departamento de Vehículos de Motor en el estado. Su caso será oído por una persona de seguridad de tráfico quien ha recibido entrenamiento de las leyes pero que no es un abogado. Si él no está de acuerdo con la decisión del Departamento de Vehículos de Motor, él puede entonces, ir a la corte para una revisión. En otras palabras, si usted recibe una citación usted iría al Departamento de Vehículos de Motor en lugar de la corte.

Estamos interesados en su respuesta franca y honesta acerca de este nuevo sistema, pero no deseamos identificarlo personalmente. Por lo tanto, no escriba su nombre en este cuestionario. Si usted no sabe la respuesta, escoja la respuesta que mejor describe su manera de pensar.

Esto no es un examen y no afectará la renovación de su licencia de manejo.

Por favor marque <u>solamente</u> <u>una</u> respuesta por cada pregunta.

Gracias por su cooperación.

1. Ha oído usted o leído algo acerca de este nuevo programa antes de este censo?

Sí ..... ☐ 1
No ..... ☐ 2 (4)

2. Dónde oyó o leyó acerca de esto?

Periódicos ..... ☐ 1
Otra persona ..... ☐ 2
Radio ..... ☐ 3 (5)
Televisión ..... ☐ 4
Revistas ..... ☐ 5
No tenía conocimiento ..... ☐ 6

3. Cree usted que citaciones de tráfico de menos importancia deben ser llevadas a las cortes y procesadas por:

Oficial de audiencias de DMV..... 1
Otra agencia..... 2
Bajo el sistema en efecto..... 3 (6.)
Mejorar el sistema de cortes en efecto..... 4

4. Cree usted que un oficial de audiencias entrenado al respecto de las leyes por el Departamento de Vehículos de Motor sería tan justo como un juez?

Sí..... 1
No..... 2 (7)

5. Preferiría usted un abogado en lugar de un oficial de audiencias de seguridad de tráfico que ha sido entrenado al respecto de las leyes para oír su caso?

Sí..... 1
No..... 2 (8)

6. Preferiría aun a un abogado si el costo resultaría en impuestos o multas más altas?

Sí..... 1
No..... 2 (9)
Prefiere todavía a un oficial de audiencias de seguridad de tráfico quien ha sido entrenado al respecto de las leyes.. 3

7. Ha aparecido en el pasado a una audiencia en el Departamento de Vehículos de Motor?

Sí..... 1
No..... 2 (10)

8. Si el Departamento de Vehículos de Motor estuviera procesando citaciones de tráfico y usted recibe una citación, usted posiblemente:

Pagaría la multa por correo..... 1
Pagaría la multa en persona..... 2 (11)

9. Aproximadamente cuántas citaciones de tráfico (en movimiento) ha tenido en California durante los últimos cinco años?

Ninguna 1
1 - 2 2
3 - 4 ..... 3 (12)
5 o mas 4

10. Cuando usted recibió una citación, usted generalmente:

Apareció en corte y se declaró culpable 1
Pagó la multa solamente (por correo o a un empleado) .. 2
Apareció en corte y se declaró inocente 3 (13)
No tiene citaciones 4

11. Si usted apareció alguna vez en la corte de tráfico, por favor describa su experiencia más típica:

Muy apurado 1
Algo apurado 2
Normal 3
Algo despacio 4 (14)
Muy despacio 5
Nunca ha aparecido en la corte de tráfico 6

12. Si usted ha aparecido alguna vez en la corte de tráfico, por favor describa la justicia de su sentencia:

Muy justa 1
Algo justa 2
Algo injusta 3 (15)
Muy injusta 4
Nunca ha aparecido en la corte de tráfico 5

13. Generalmente, si usted pagó una multa, lo hizo porque:

Usted era culpable 1
Usted no era culpable pero no tenía tiempo para disputar la citación 2 (16)
No ha tenido citaciones 3

14. Si usted generalmente se ha declarado culpable y ha aparecido ante un juez, cuál fue el resultado?

Una multa o sentencia máxima fue impuesta 1
Una multa o sentencia reducida fue impuesta 2
La sentencia fue suspendida 3
La citación fue anulada 4 (17)
Fue requerido que atendiera la escuela de tráfico.... 5
No ha recibido citaciones 6

15. Si usted se está declarando inocente de una citación de tráfico, preferiría que el oficial de policía:

Estuviera presente en la audiencia 1
No estuviera presente en la audiencia 2 (18)

16. Si el oficial de policía no estuviera presente, debería él:

Someter una declaración de lo que pasó 1
Someter solamente la citación 2 (19)
Enviar a otro oficial a que lo represente 3

17. Generalmente, cree usted que el aparecer en corte reducirá su sentencia?

Sí 1
No 2 (20)

18. En mi opinión, personas con un record grave de ofensas de manejo deberían pagar multas más altas:

Sí 1
No 2 (21)
No tiene opinión ... 3

19. Audiencias y multas por violaciones de tráfico (en movimiento) deberían ser las mismas para todas las personas en todas las áreas del estado:

Sí 1
No 2 (22)
No tiene opinión ... 3

20. Menores de edad deberían ser tratados de la misma manera que adultos por violaciones de tráfico (en movimiento):

Sí 1
No 2 (23)

21. Cree usted que en todos estos años los procedimientos para procesar casos de tráfico en las cortes han:

Mejorado 1
Estado lo mismo 2
Empeorado 3 (24)
No esta familiarizado con los procedimientos 4

Las siguientes preguntas son para propósitos estatísticos solamente:

22. Su edad

Menor de 20 años.... 1
20 - 29..... 2
30 - 39..... 3
40 - 49..... 4
50 - 59..... 5
60 o más..... 6

(25)

23. Sexo

Masculino..... 1
Femenino..... 2

(26)

24. Cuál es el ingreso anual aproximado de su familia?

0 - $6000..... 1
$6000 - $8000..... 2
$8000 - $10,000..... 3
$10,000 - $15,000... 4
$15,000 - $25,000... 5
$25,000 - o más..... 6

(27)

25. Aproximado numero de millas que maneja al año:

Menos de 2,500 1
2,500 - 7,500 2
7,501 - 12,500 3
12,501 - 17,500 4
17,501 - 22,500 5
más de 22,500 6

(28)

26. Cuál es el grado más alto que ha completado en la escuela?

Menos del noveno grado 1
Parte de la escuela secundaria..... 2
Graduado de la escuela secundaria..... 3
Parte del colegio..... 4
Diploma de dos años del colegio..... 5
Diploma de cuatro años del colegio..... 6
Estudios avanzados de bachillerato..... 7

(29)

JUDGES SURVEY

DEPARTMENT OF MOTOR VEHICLES

QUESTIONNAIRE ON ADMINISTRATIVE

ADJUDICATION OF TRAFFIC INFRACTIONS

The California Legislature is interested in the possibility of introducing to this state a system of handling traffic infractions similar to procedures which have been implemented in the states of New York, Rhode Island and Washington. Senate Concurrent Resolution 40 of the 1975 regular session of the California Legislature directed the Department of Motor Vehicles in cooperation with the Judicial Council to study the feasibility of implementing such a system in California.

The experiences of the above-named states indicate that the administrative adjudication system effectively unclogs the lower courts by removing from them the burden of handling thousands of routine traffic violations. The system also appears to offer faster and more uniform application of the traffic laws as well as improved sanctioning capabilities through the availability of the driver record. The features of the system should result in an enhanced traffic safety system.

The Administrative Adjudication Task Force is interested in surveying your opinions regarding this new system. Therefore, we request that you complete the following questionnaire.

Please mark one answer on each question that best expresses your opinion.

Thank you for your cooperation.

CC/2

JUDGES SURVEY

Survey Code 2 (1)

1. Do you believe the Department of Motor Vehicles could process traffic infractions as well as courts do?

Yes	☐ 1	(2)
No	☐ 2	

2. The practical problems with administrative adjudication are that it might:

duplicate existing facilities	☐ 1	
abrogate the defendant's rights.....	☐ 2	
provide too much information on the driving record to insurance companies.....	☐ 3	(3-4)
make people less concerned about their driving record	☐ 4	
other (please be concise)_____		
_____	(__ __)	

3. Do you believe a non-attorney with the proper legal training could effectively adjudicate traffic infractions?

absolutely	☐ 1	
probably could.....	☐ 2	
doubtful	☐ 3	(5)
probably could not.....	☐ 4	

4. Do you believe the effectiveness of the courts could be improved if parking and traffic infractions were removed?

Yes	☐ 1	(6)
No	☐ 2	

5. What do you believe will be the effect on the quality of justice for the defendant under the new system?

more just	☐ 1	
no effect	☐ 2	(7)
less just	☐ 3	

6. Do you believe the new system has a potential of enhancing traffic safety on the highways?

Yes	☐ 1	(8)
No	☐ 2	

7. What do you believe is the appropriate burden of proof for deciding minor traffic infractions in an administrative setting where there is no possibility of jail as a sanction?

proof beyond a reasonable doubt	1	(9)
clear and convincing evidence	2	
preponderance of the evidence	3	
substantial proof	4	

8. Do you believe juveniles should be treated in the same manner as adults for moving violations?

Yes	1	(10)
No	2	

9. Do you believe sentences and procedures for traffic offenders should be uniform throughout the state?

Yes	1	(11)
No	2	

10. Is there a traffic commissioner or traffic referee in your court?

Yes	1	(12)
No	2	

11. Approximately what percentage of the traffic offenders appearing before your court, do you send to traffic school? (This does not include driving while intoxicated or drug referrals)

(13-14)

____%

12. Typically, in your judicial district, when a traffic offender is sent to traffic school, is the:

violation dismissed	1	(15-16)
violation suspended	2	
fine reduced	3	
maximum fine still imposed	4	
other (please be concise)_____		(__ __)

_____

13. Are statewide driving records generally available to you?

Yes	1	(17)
No	2	

14. Do you believe a review of a person's driving record is important when assigning a sanction for a traffic infraction?

Yes 1
No 2 (18)

15. During the last year, approximately what percentage of <u>your time</u> was spent on non-parking traffic infractions?

____% (19-20)

16. During the last year, approximately what percentage of <u>your time</u> was spent on parking infractions?

____% (21-22)

17. In your judicial district, approximately what percentage of your court's caseload involves <u>non-parking</u> traffic infractions?

15% or less 1
16% to 30% 2
31% to 55% 3
56% to 80% 4
81% or more 5
do not know 6 (23)

18. In your judicial district, approximately what percentage of your court's caseload involves parking infractions?

15% or less 1
16% to 30% 2
31% to 55% 4
56% to 80% 5
81% or more 6
do not know 7 (24)

19. In your judicial district, approximately what percentage of the judge's time involves <u>non-parking</u> traffic infractions?

15% or less 1
16% to 30% 2
31% to 55% 3
56% to 80% 4
81% or more 5
do not know 6 (25)

20. In your judicial district, approximately what percentage of the judge's time involves parking infractions?

15% or less	1	(26)
16% to 30%	2	
31% to 55%	3	
56% to 80%	4	
81% or more	5	
do not know	6	

21. In your judicial district, approximately what percentage of clerical staffing time is spent in processing <u>non-parking</u> traffic infractions?

15% or less	1	(27)
16% to 30%	2	
31% to 55%	3	
56% to 80%	4	
81% or more	5	
do not know	6	

22. In your judicial district, approximately what percentage of clerical staffing time is spent in processing parking infractions?

15% or less	1	(28)
16% to 30%	2	
31% to 55%	3	
56% to 80%	4	
81% or more	5	
do not know	6	

23. How long have you served the court?

less than 1 year	1	(29)
1 to 5 years	2	
6 to 10 years	3	
11 to 15 years	4	
16 to 20 years	5	
over 20 years	6	

24. What is the approximate population within the boundary of your jurisdiction?

under 5000	1	(30)
5000 - 20,000	2	
20,000 - 40,000	3	
40,000 - 70,000	4	
70,000 - 100,000	5	
100,000 - 250,000	6	
over 250,000	7	

25. In which county is your jurisdiction located?

_____ (__ __) (31-32)

26. Do you consider your jurisdiction to be rural or urban?

rural	1	(33)
urban	2	

COURT CLERKS SURVEY

DEPARTMENT OF MOTOR VEHICLES

QUESTIONNAIRE ON ADMINISTRATIVE

ADJUDICATION OF TRAFFIC INFRACTIONS

The California Legislature is interested in the possibility of introducing to this state a system of handling traffic infractions similar to procedures which have been implemeneted in the states of New York, Rhode Island and Washington. Senate Concurrent Resolution 40 of the 1975 regular session of the California Legislature directed the Department of Motor Vehicles in cooperation with the Judicial Council to study the feasibility of implementing such a system in California.

The experiences of the above-named states indicate that the administrative adjudication system effectively unclogs the lower courts by removing from them the burden of handling thousands of routine traffic violations. The system also appears to offer faster and more uniform application of the traffic laws as well as improved sanctioning capabilities through the availability of the driver record. The features of the system should result in an enhanced traffic safety system.

The Administrative Adjudication Task Force is interested in surveying your opinions regarding this new system. Therefore, we request that you complete the following questionnaire.

Please mark one answer on each question that best expresses your opinion.

Thank you for your cooperation.

CC/1

CLERKS SURVEY

Survey Code 1 (1)

1. Do you believe the Department of Motor Vehicles could process traffic infractions as well as courts do?

Yes 1
No 2 (2)

2. The practical problems with administrative adjudication are that it might:

duplicate existing facilities 1
abrogate the defendant's rights 2
provide too much access information on the driving record to insurance companies ... 3 (3-4)
make people less concerned about their driving record 4
other (please be concise) _____
_____ (__ __)

3. Do you believe a non-attorney with the proper legal training could effectively adjudicate traffic infractions?

absolutely 1
probably could 2
doubtful 3 (5)
probably could not 4

4. Do you believe the effectiveness of the courts could be improved if parking and traffic infractions were removed?

Yes 1
No 2 (6)

5. What do you believe will be the effect on the quality of justice for the defendant under the new system?

more just 1
no effect 2 (7)
less just 3

6. Do you believe the new system has a potential of enhancing traffic safety on the highways?

Yes 1
No 2 (8)

7. During the last year, approximately what percentage of your time was spent on non-parking traffic infractions?

____% (9-10)

8. During the last year, approximately what percentage of your time was spent on parking infractions?

____% (11-12)

9. In your judicial district, approximately what percentage of your court's caseload involves non-parking traffic infractions?

15% or less 1
16% to 30% 2
31% to 55% 3
56% to 80% 4
81% or more 5
do not know 6

(13)

10. In your judicial district, approximately what percentage of your court's caseload involves parking infractions?

15% or less 1
16% to 30% 2
31% to 55% 3
56% to 80% 4
81% or more 5
do not know 6

(14)

11. In your judicial district, approximately what percentage of the judge's time involves non-parking traffic infractions?

15% or less 1
16% to 30% 2
31% to 55% 3
56% to 80% 4
81% or more 5
do not know 6

(15)

12. In your judicial district, approximately what percentage of the judge's time involves parking infractions?

15% or less	☐ 1	(16)
16% to 30%	☐ 2	
31% to 55%	☐ 3	
56% to 80%	☐ 4	
81% or more	☐ 5	
do not know	☐ 6	

13. In your judicial district, approximately what percentage of clerical staffing time is spent in processing <u>non-parking</u> traffic infractions?

15% or less	☐ 1	(17)
16% to 30%	☐ 2	
31% to 55%	☐ 3	
56% to 80%	☐ 4	
81% or more	☐ 5	
do not know	☐ 6	

14. In your judicial district, approximately what percentage of clerical staffing time is spent in processing parking infractions?

15% or less	☐ 1	(18)
16% to 30%	☐ 2	
31% to 55%	☐ 3	
56% to 80%	☐ 4	
81% or more	☐ 5	
do not know	☐ 6	

15. Is there a traffic commissioner or traffic referee in your court?

Yes	☐ 1	(19)
No	☐ 2	

16. Typically, in your judicial district, when a traffic offender is sent to traffic school, is the:

violation dismissed	☐ 1	(20-21)
violation suspended	☐ 2	
fine reduced	☐ 3	
maximum fine still imposed	☐ 4	

other (please be concise)_____

_____(__ __)

17. How long have you served the court?

less than 1 year	☐ 1	(22)
1 to 5 years	☐ 2	
6 to 10 years	☐ 3	
11 to 15 years	☐ 4	
16 to 20 years	☐ 5	
over 20 years	☐ 6	

18. What is the approximate population within the boundary of your jurisdiction?

under 5000	☐ 1	(23)
5000 - 20,000	☐ 2	
20,000 - 40,000	☐ 3	
40,000 - 70,000	☐ 4	
70,000 - 100,000	☐ 5	
100,000 - 250,000	☐ 6	
over 250,000	☐ 7	

19. In which county is your jurisdiction located?

_____ (__ __) (24-25)

20. Do you consider your jurisdiction to be rural or urban?

rural	☐ 1	(26)
urban	☐ 2	

APPENDIX I

Model Enabling Legislation for Administrative Adjudication of Traffic Infractions

Model Enabling Legislation for Administrative Adjudication of Traffic Infractions

An act to add Section 15.5 and 15.6 to the Penal Code, and add Section 13369 and Chapter 2.5 (commencing with Section 40650) to Division 17 of the Vehicle Code, relating to administrative adjudication of infractions, and making an appropriation therefor.

The people of the State of California do enact as follows:

SECTION 1. Section 15.5 is added to the Penal Code, to read:

15.5 Notwithstanding any other provision of law, an infraction violation of the Vehicle Code or an infraction violation of a local nonparking traffic ordinance adopted pursuant to the Vehicle Code is neither a crime nor a public offense.

15.6 Notwithstanding any other provision of law, a peace officer may, on reasonable cause, stop any person for the purpose of issuing a Notice to Appear for an infraction violation of the Vehicle Code or any local nonparking traffic ordinance adopted pursuant to the provisions of the Vehicle Code. Such stops shall not constitute arrests. Failure of any person to stop and cooperate with the lawful order of a peace officer in the exercise of the authority granted by this Provision shall be a misdemeanor.

SECTION 2. Section 13369 is added to the Vehicle Code to read:

13369. In addition to any other authority vested in the Department and subject to procedures provided for by this division, the Department may suspend the license of any person found to have committed an infraction violation of this code, or an infraction of a local nonparking traffic ordinance adopted pursuant to this code, for a period of time not to exceed 45 days for the first conviction

within a 12 month period, 75 days for the second conviction within a 12 month period, 105 days for a third or subsequent conviction within a 12 month period.

SECTION 3. Chapter 2.5 (commencing with Section 40650) is added to Division 17 of the Vehicle Code, to read:

Chapter 2.5 Administrative Adjudication

Article 1. Administrative Adjudication Board

40650. There is in the Department of Motor Vehicles an Administrative Adjudication Board, consisting of five members appointed by the Governor with the approval of the Senate to five year terms.

As used in this chapter, "Board" means the Administrative Adjudication Board.

40651. The Governor, with the approval of the Senate shall fill all vacancies on the Board as they occur.

40652. The appointments of Board members shall be effective on January 1, ____. One member of the first Board shall be appointed for a five year term, one member shall be appointed for a four year term, one member shall be appointed for a three year term, one member shall be appointed for a two year term, and one member shall be appointed for a one year term.

40653. The Governor may, after notice and hearing, remove a Board member for continual neglect of duties, incompetence or for unprofessional conduct.

40654. The Board shall organize and elect a president from among its members for a term of one year at the first meeting of each year. The newly elected president shall assume the duties of office at the conclusion of the election meeting.

40655. The Board shall conduct meetings as required by this chapter and such meetings shall be subject to the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

40656. Three members of the Board shall constitute a quorum for the transaction of business, for the performance of any duty, or the exercise of any of its power or authority.

40657. Each member of the Board shall receive a per diem of one hundred dollars ($100) for each day actually spent in the discharge of official duties, and shall be reimbursed for traveling and other expenses necessarily incurred in the performance of Board duties. The per diem and reimbursement for expenses shall be paid solely from funds appropriated for the Administrative Adjudication Program.

40658. The Department shall provide such qualified trained personnel, office space, equipment and supplies necessary to administer this Chapter.

40659. The Department shall, as the need occurs, provide adequate rooms for the meetings of the Board in Los Angeles, San Francisco, Sacramento, and such other locations in the state as may be required, to administer this Chapter.

40660. The Board shall:
(a) Adopt rules and regulations in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code governing such matters as are within its jurisdiction and as shall be necessary to effectuate the purposes of this Chapter.

(b) Appoint such administrative staff and Hearing Officers as necessary to hear and determine cases as provided by this Chapter. Such appointments shall conform to existing civil service regulations, excepting Justice Court judges appointed as Hearing Officers under the provisions of this chapter.

(c) Hear and consider, within the limitations and in accordance with the procedures hereinafter provided, all appeals from decisions of Hearing Officers of the Board.

(d) After public hearing establish a schedule of monetary sanctions for answers by mail admitting accusations, provided that no such monetary sanction shall exceed the maximum established by law.

(e) Prescribe by regulation the form for the Notice to Appear to be used for all traffic violations and to establish procedures for proper administrative controls over the disposition thereof.

(f) Provide pursuant to rules and regulations interpreter services for non-English speaking persons at every step of the hearing and appeals processes.

40661. In lieu of establishing an Administrative Adjudication Office in each locality, the Board may contract with counties for use of existing Justice Court facilities for the performance of the function of an Administrative Adjudication Office. In the event of any such contract for facilities, the Board may contract with individual Justice Court judges or their successors to be Hearing Officers of the Board and contractual hearings shall be conducted pursuant to the provisions of this Chapter.

40662. The costs of the Administrative Adjudication Program, including the costs of the Department related thereto, shall be funded from the General Fund.

Article 2. Violations

40675. (a) Any person who drives a motor vehicle upon a highway shall be deemed to have given his consent to stop and cooperate with a peace officer in pursuing his duty of issuing a Notice to Appear for violation of any infraction of this code or infraction of a local nonparking traffic ordinance adopted pursuant to this code.

(b) If any such person refuses the officer's request to stop or to cooperate with a peace officer in the exercise of his duty to issue a Notice to Appear, the Department, upon receipt of the officer's sworn statement that he had reasonable cause to believe that such person had violated any infraction section of this code or an infraction of a local nonparking traffic ordinance adopted pursuant to this code and failed to stop or cooperate after being requested by the officer, may suspend his privilege to operate a motor vehicle for a period not to exceed six months. No such suspension shall become effective until 10 days after the giving of written notice thereof as provided for in subdivision (c).

(c) The Department shall immediately notify such person in writing of the action taken and upon his request in writing and within 15 days from the date of receipt of such request shall afford him an opportunity for a hearing in the same manner and under the same condition as provided in Article 3 (commencing with Section 14100) of Chapter 3 of this code.

For purposes of this section the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had violated any infraction provision of this code or any local nonparking traffic ordinance adopted pursuant to the provisions of this code, whether the person stopped after a request by the peace officer and whether the person cooperated by showing his driver's license, and signed the Notice to Appear.

An application for a hearing made by the affected person within 10 days of receiving notice of the Department's action shall operate to stay the suspension by the Department for a period of 15 days during which time the Department must afford a hearing. If the Department fails to afford a hearing within 15 days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the Department's action as hereinafter provided. However, if the affected person requests that the hearing be continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the Department's notice that said request for continuance has been granted.

If the Department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension herein provided shall not become effective until five days after receipt by said person of the Department's notification of such suspension.

"Cooperating", as used in this section includes, but is not limited to, stopping upon request, identification, and signing the Notice to Appear.

40676. Whenever a person is accused of an infraction violation of any provision of this Code or for an infraction of a local nonparking traffic ordinance adopted pursuant to this Code, the citing officer shall prepare a Notice to Appear. The Notice to Appear shall contain the name and address of the cited person, the license number of any vehicle involved, the name and address, when available, the registered owner or lessee of the vehicle, the violation charged, the time within which to answer, the time and place the accused person shall appear for hearing, and the uniform sanction imposed for the alleged violation.

40677. The time for a hearing specified on the Notice to Appear shall be at least 14 days after such Notice to Appear is issued.

40678. The place specified in the Notice to Appear shall be either at an Administrative Adjudication Hearing Office or at a Court designated by the board as an administrative hearing location.

40679. Every Notice to Appear alleging a speed infraction shall specify the approximate speed at which the driver is alleged to have driven and the exact or prima facia speed limit applicable to the highway at the time and place of the alleged violation and shall state any other speed limit alleged to have been exceeded if applicable to the particular type of vehicle or combination of vehicles operated by the accused driver.

40680. The citing officer shall deliver a Notice to Appear to any person accused of an infraction violation of any provision of this Code or of an infraction of a local nonparking traffic ordinance adopted pursuant to this Code, which shall include all information appearing on the copy of the Notice to Appear filed with the Administrative Adjudication Hearing Office or Court. No peace officer shall enter on any Notice to Appear filed with a Hearing Officer or attach thereto or accompany the Notice to Appear, any written statement giving information or containing allegations which have not been given to the person receiving the Notice to Appear.

40681. The citing officer shall file, or cause to be filed, as soon as possible, a copy of the Notice to Appear with the local Administrative Adjudication Hearing Office or court having jurisdiction over the alleged offense.

A copy of the Notice to Appear shall also be filed with the law enforcement agency employing the citing officer.

40682. Any person accused of an offense under this article may have an attorney appear with the person in any administrative adjudication proceedings under this Chapter.

40690. Notwithstanding any other provisions of law, any person 16 years of age and over, accused of an infraction violation of any provision of this Code or an infraction violation of a local nonparking traffic ordinance adopted pursuant to this Code, shall have the case adjudicated pursuant to the provisions of this Chapter and the rules and regulations of the Administrative Adjudication Board, as provided in this Chapter.

40691. Whenever a criminal offense and a Vehicle Code infraction violation or an infraction violation of a local nonparking traffic ordinance adopted pursuant to this Code, arise out of the same event, only the criminal offense will be heard by the court having jurisdiction. Separate administrative adjudication of the infraction violation or an infraction violation of a local nonparking traffic ordinance will be made pursuant to the provisions of this Chapter.

40692. (a) Any person who receives a Notice to Appear for a violation described in this Chapter, shall answer such Notice to Appear by personally appearing or by mail, within 14 calendar days of the date of the alleged violation as provided in paragraphs (b) and (c) of this section. Failure to answer within 14 days of the alleged violation shall constitute a waiver of the right to a Confrontation Hearing.

(b) If a person accused of a violation admits to the violation as shown on the Notice to Appear, that person shall complete an appropriate answer form on the back of the Notice to Appear as prescribed by the Board, and forward such Notice to Appear answer form to the local Administrative Adjudication Area Processing Center specified on such Notice to Appear. A check or money order in the amount of the monetary sanction for the violation accused of, if included in

such schedule, shall be submitted with such answer. Unless permitted by the rules and regulations of the Board, such answer may not be accepted by mail if it will constitute a third or subsequent point count violation occurring within a 12 month period, or a fourth or more subsequent point count violation occurring within 24 months, or a fifth or more subsequent point count violation occurring within a 36 month period.

(c) If a person accused of a violation denies part or all of the violation alleged on the Notice to Appear, that person shall complete an appropriate form on the back of the Notice to Appear as prescribed by the Board for that purpose, and forward such Notice to Appear form to the local Administrative Adjudication Area Processing Center specified on such Notice to Appear. A check or money order in the amount of the designated monetary sanction for the violation accused of may be submitted with such answer. Upon receipt, such answer shall be entered in Department of Motor Vehicles records and a hearing date established by the local Administrative Adjudication Area Processing Center unless a hearing date is otherwise established on the Notice to Appear. The local Administrative Adjudication Area Processing Center shall notify such person by return mail of the date of such hearing, unless the accused has been otherwise notified by the Notice to Appear.

40693. (a) An accused person shall be fully apprised of the consequences of an admission to an accusation of a traffic violation where the person's driver's license may be in jeopardy of suspension or revocation because of such admission.

(b) Persons described in subdivision (a) shall be given the opportunity to change their answers and request any hearings that would have otherwise been available.

40694. If a person accused of a violation shall fail to answer the Notice to Appear as provided in this Article, the Board may suspend that person's driver's license or driving privilege until such person shall answer. If an accused person fails to appear at a hearing, when such is provided for pursuant to this Article, such person's license may be suspended pending adjudication at a subsequent hearing, or disposition of the accusations involved.

40695. (a) Every hearing for the adjudication of an infraction violation of this Code or an infraction violation of a local nonparking traffic ordinance adopted pursuant to this Code shall be held before a Hearing Officer appointed by the Board.

(b) Hearings may be either Confrontation or Summary. In Confrontation Hearings, the cited person and the citing police officer shall appear. In Summary Hearings, only the cited person shall appear.

A Summary Hearing shall consist of either a denial of the accusation with a waiver of confrontation and cross-examination rights by the accused person, or an admission of the accusation with an explanation.

(c) All Confrontation Hearings shall be held at the location specified on the Notice to Appear. Summary Hearings may be held at any Hearing Office in the state at the option of the cited person.

40696. (a) Administrative Adjudication hearings shall be recorded entirely and verbatim by automatic recording devices.

(b) Recordings of hearings shall be preserved for a period of no less than 30 days after the period for appeal has expired and no longer than as specified by the Board by rule and regulation.

40697. The burden of proof shall be upon the citing police officer, and no accusation may be sustained except by clear and convincing evidence.

Clear and convincing evidence is more than the preponderance of evidence required in most civil cases, and less than the evidence of beyond a reasonable doubt required in a criminal case. Preponderance of evidence requires a mere probability, while clear and convincing evidence requires a high probability.

40698. (a) In cases where an accused person admits by mail or in person and pays the appropriate monetary sanction, an administrative order shall be entered in Department of Motor Vehicles records showing such admission.

(b) Where a hearing is conducted, the finding of the Hearing Officer or judge shall be entered in the Department of Motor Vehicles records showing such finding.

40699. (a) Hearing Officers shall have the same power to revoke or suspend licenses as is granted to the Department by law. In lieu of revocation or suspension, Hearing Officers may also impose any other sanctions prescribed by the Board, except that no sanction shall include imprisonment, nor, if monetary, shall it exceed the maximum monetary sanction established by law.

(b) A traffic infraction violation of this Chapter is not a crime and the sanction imposed therefor shall not be deemed for any purpose a penal or criminal punishment.

40700. When a person is required to pay a monetary sanction for a traffic infraction the monetary sanction shall be payable forthwith, except that the Hearing Officer may grant permission for the payment to be made within a specified period of time or in specified install-

ments. Such permission shall be made contingent upon the person giving his written promise to pay the sanction within the time authorized or to appear at the Hearing Office on the date on which the sanction or any installment thereof is due.

Any person willfully violating his written promise to pay the sanction or appear at the Hearing Office is guilty of a misdemeanor.

(b) If within the time authorized by a Hearing Officer a person against whom an accusation has been sustained for an infraction violation of this Code or an infraction of a local nonparking traffic ordinance adopted pursuant to this Code, fails to pay the monetary sanction imposed or any installment thereof, the Hearing Officer may suspend the driving privilege and order the person to surrender the driver's license to the Hearing Officer.

40701. All monetary sanctions collected pursuant to the provisions of this Chapter shall be forwarded monthly to the State Controller. The funds shall be disbursed subject to the applicable provisions of Chapter 2 (commencing with Section 42200) of Division 18 of this Code after the costs of the Administrative Adjudication Program are deducted. Such administrative costs shall be deposited in the General Fund.

40702. Unless a Hearing Officer determines that a substantial traffic safety hazard would result, as determined pursuant to the rules and regulations of the Board, any suspension or revocation of a driver's license or driving privilege imposed pursuant to this Article shall be stayed for a period of 30 days from the date the person

receives notice of the Hearing Officer's decision, or, if an administrative appeal is instituted, until the effective date fixed by the Board for its final order.

40703. No findings, evidence, admission, answer or any other record acquired by, or in the possession of, the Board pursuant to the provisions of this Chapter shall be admissible in any civil proceeding for damages.

40704. Notwithstanding the provisions of Section 14112, all matters covered by this Chapter shall be conducted pursuant to the provisions of this Chapter and not Chapter 5 (commencing with Section 11500) of Part 1 of Division 3, of Title 2 of the Government Code.

Article 4. Administrative Review

40710. The Board shall also constitute an appeals board for review of decisions of Administrative Adjudication Hearing Officers.

40711. Any person receiving an adverse determination from a Hearing Officer may appeal such determination pursuant to the provisions of this Article.

40712. (a) Each appeal filed pursuant to this Article shall be reviewed by the Board, which shall cause an appropriate entry to be made in the records of the Department.

(b) No appeal shall be reviewed if it is filed more than 30 days after the appellant received notice of the decision appealed from.

40713. Any person desiring to file an appeal from an adverse determination pursuant to this Chapter, shall do so in the form and manner provided by the Board. The transcript of any hearing which formed the basis for such determination shall be reviewed only if it is submitted by the appellant. An appeal shall not be deemed to be finally submitted until the appellant has submitted all required forms or documents. If any party to the appeal requests the right to appear before the Board, the time and place for such hearing shall be set by the Board.

40714. The fee for filing an appeal shall be ten dollars ($10). No appeal shall be accepted unless the required fee has been timely paid.

40715. A transcript of the record of any hearing may be obtained at cost by the appellant. A deposit fee of twenty dollars ($20) shall be required to initiate preparation of a transcript. Any deficit shall be collected from the appellant and any excess shall be returned.

40716. In all cases where a stay has been granted prior to filing an appeal, the Board shall enter its order within 60 days after the filing of the appeal, except in the case of unavoidable delay in supplying the administrative record, in which event the Board shall make its final order within 60 days after receipt thereof. Failure tc make such final order within 60 days will automatically reverse the Hearing Officer's decision. The Board shall enter in Departmental records an appropriate order showing the reversal.

40717. The Board shall have the power to reverse, amend, or modify, the decision of a Hearing Officer if it determines that any of the following exist:

(a) The Hearing Officer has proceeded without or in excess of jurisdiction.

(b) The Hearing Officer has proceeded in a manner contrary to the law.

(c) The Hearing Officer's determination is not supported by the findings.

(d) Findings are not supported by the weight of the evidence in the light of the whole record reviewed in its entirety, including any and all relevant evidence presented at the hearing.

(e) There exists relevant evidence, which in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing.

40718. The Board shall have the power on appeal to amend, modify, or reverse the sanction imposed by any Hearing Officer where said Hearing Officer has not followed prescribed Board rules and regulations governing sanctions.

40719. When an order reverses the decision of a Hearing Officer, the Board shall direct the Department to take such further action as is required.

40720. The effective date of any Board order shall be 30 days from the date notice of the order is received by the appellant or such earlier date as the Board may prescribe.

40721. Final orders of the Board shall be in writing and copies thereof shall be delivered to the appellant personally or sent by certified or registered mail. Orders shall be final upon receipt by the appellant and no reconsideration or rehearing shall be permitted thereafter.

40722. No determination of a Hearing Officer, appealable under the provisions of this Article, shall be reviewed in any court unless an appeal has first been filed and determined in accordance with this Article.

APPENDIX J

Administrative Adjudication Program
Cost Details and Projections

ADMINISTRATIVE ADJUDICATION PROGRAM COSTS
(Thousands of Dollars in 1976 Dollars)

21 Year Planning Horizon

I Feasibility Study | II System Design | III Pilot | IV Phase In | V 15 Years of Operation

	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Headquarters Staff	(2) 168	336	(3) 795	795	(1) 795	795	795	795	795	795	795	795	795	795	795	795	795	795	795	795	795
EDP System Design	(4) $ 56	(4) 169	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Data System Support Labor	$ -0-	-0-	(5) 132	132	132	132	132	132	132	135	135	135	138	138	138	141	141	141	144	144	144
Field Office Staff	$ -0-	-0-	(7) 520	520	(8) 2,736	6,483	(6) 8,420	8,420	8,420	8,622	8,622	8,622	8,827	8,827	8,827	9,033	9,033	9,033	9,238	9,238	9,443
Space For Field Operations	$ -0-	-0-	(10) 20	20	(11) .210	(11) 580	(9) 810	810	810	810	810	810	810	810	810	810	810	810	810	810	810
Miscellaneous Special Expense	$ -0-	-0-	(13) 150	150	(13) 224	(12) 300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300
Field Office Furniture & Office Machines-Purchase	(14) $ 27	-0-	(15) 28	-0-	(16) 280	280	(17) 56	56	56	56	56	56	56	56	56	56	56	56	56	56	56
Equipment Lease (EDP & Other)	$ -0-	-0-	(19) 38	38	(20) 320	(20) 801	(18) 1,068	1,068	1,068	1,094	1,094	1,094	1,120	1,120	1,120	1,146	1,146	1,146	1,172	1,172	1,198
Total	$ 251	505	1,503	1,655	4,697	9,371	11,581	11,581	11,581	11,812	11,812	11,812	12,046	12,046	12,046	12,231	12,281	12,281	12,515	12,515	12,750
Savings from Existing DMV Systems	-0-	-0-	(22) 41	41	(23) 387	615	(21) 820	820	820	840	840	840	860	860	860	880	880	880	900	900	920
Number Infractions	$ N/A	N/A	.19	.19	4.0	4.0	4.1	4.1	4.1	4.2	4.2	4.2	4.3	4.3	4.3	4.4	4.4	4.4	4.5	4.5	4.6
Sub Total	$ 251	505	1,639	1,614	4,310	8,756	10,761	10,761	10,761	10,972	10,972	10,972	11,186	11,186	11,186	11,401	11,401	11,401	11,615	11,615	11,830
10% Contingency	$ 25	51	164	161	431	876	1,076	1,076	1,076	1,097	1,097	1,097	1,118	1,118	1,118	1,140	1,140	1,140	1,161	1,161	1,183
Administrative adjudication Program Cost	$ 276	556	1,803	1,775	4,741	9,632	11,837	11,837	11,837	12,069	12,069	12,069	12,304	12,304	12,304	12,541	12,541	12,541	12,776	12,776	13,013

*Feasibility Study Costs are not included in 1976 cost estimates.

FOOTNOTES

ADMINISTRATIVE ADJUDICATION PROGRAM COSTS

1. $479,352 computed by Management Analysis Section plus 20.37% benefits, 30.15% overhead + $42,600 for Administrative Adjudication Board = $793,560. (See Exhibit A)

2. See Exhibit B.

3. Full headquarters staff during pilot effort.

4. Total $226,008 per Division of Electronic Data Processing estimate allocated 25% to 1976 and 75% to 1977. (See Exhibit C and J)

5. $131,952 per Division of Electronic Data Processing estimate, assumed a full amount from beginning. (See Exhibit D and J)

6. $8,420,583 obtained from Management Analysis Section estimate of $5,594,328 (See Exhibit E) plus 20.23% benefits and 30.19% overhead, this approximate cost of $8.4 million based on 4.2 million filing workload or a unit cost of $2.00 per filing; 1982 costs calculated as 4.1 million infractions times $2.00 per infraction $\cong$ $8.2 million; remainder of costs in this row calculated similarly.

7. Based on pilot jurisdiction with approximately 5% of statewide volume, 31 person staff. (27 Area Seven personnel plus three persons to accomodate for inefficiency during pilot effort)

8. Based on a straight line projection of field office costs from pilot program costs to fully operational level costs.

9. 45 locations at 3000 sq. ft. per location = 135,000 sq. ft. at $6.00 per year = $810,000, future capital outlay is drawn from this figure.

10. 3000 sq. ft. at $6.00 per year $\cong$ $20,000.

11. Based on a straight line growth in space during Phase IV.

12. See Exhibit F.

13. Miscellaneous expense assumed to be approximately 50% of Phase V during pilot program and 75% during first year of Phase IV.

14. Headquarters Office only.

15. Based on 31 persons during pilot effort (Area 7 plus 3 person efficiency factor)

16. See Exhibit G, 50% each year during Phase IV.

17. 10% per year replacement costs.

18. See Exhibit G, fixed portion $371,054 + variable at $.254 per citation.

19. See Exhibit H.

20. Based on straight line increase.

21. See Exhibit I, $.20 per infraction.

22. 5% of 1982, full operating savings.

23. Straight line increase to Phase V levels.

ADMINISTRATIVE ADJUDICATION
STAFFING AND SALARY SUMMARY
HEADQUARTERS

Exhibit A

	Executive	Clerical		Annual Salary* Executive and Professional Each	Annual Salary* Executive and Professional Total	Annual Salary* Clerical Each	Annual Salary* Clerical Total
Executive Officer - CEA III	1	1	Secretary II	$27,612	$27,612	$12,648	$12,648
Assistant Executive Officer - Legal - CEA II	1	1	Secretary I	25,644	25,644	11,460	11,460
Staff Counsel II	2	2	Legal Steno	26,292	52,584	9,036	18,072
Staff Counsel I	3	1	Legal Steno	23,844	71,532	9,036	9,036
Chief, Staff Services - SSM II	1	1	Stenographer Range B	22,152	22,152	8,604	8,604
Staff Analysts (3 Assoc.)	3	2	Clerk Typist II	18,228	54,684	8,400	16,800
(3 Asst.)	3		Range B	14,988	44,964		
Assistant Executive Officer - Operations - CEA II	1	1	Secretary I	25,644	25,644	11,460	11,460
Regional Directors - CEA I North	1	1	Sr. Steno	23,268	23,268	9,960	9,960
Regional Directors - CEA I South	1	1	Sr. Steno	23,268	23,268	9,960	9,960
	17	11			$371,352		$108,000

Total Annual Headquarters Direct Salary Cost — $371,352 + $108,000 = $479,352

Headquarters Wage Cost	$ 479,352
20.37% Staff Benefits	97,644
30.18% Overhead	173,964
Administrative Adjudication Board Expenses	45,000
Sub-TOTAL	$ 795,960
Field Operations Wage Cost	8,420,583
TOTAL Wage Cost	$9,216,543

*Estimated on the basis of the third step within each salary range.

Exhibit B

ADMINISTRATIVE ADJUDICATION IMPLEMENTATION STUDY STAFFING AND SALARY SUMMARY

	Professional	Clerical		Annual Salary* Professional		Annual Salary* Clerical	
				Each	Total	Each	Total
Implementation Study Project Director CEA I	1	1	Secretary I	$23,268	$23,268	$11,460	$11,460
Staff Counsel I	1	1	Legal Steno	23,844	23,844	9,036	9,036
Staff Support Section SSM II	1	1	Stenographer	22,152	22,152	8,604	8,604
Staff Analyst (3 Assoc.)	3	2	Clerk Typist II Range B	18,228	54,684	8,400	16,800
Staff Analyst (3 Asst.)	3			14,988	44,964		
			TOTAL ANNUAL SALARY		$168,912		$ 45,900
							$214,812
Implementation Study Salary Overhead Cost	$504,792		20.37% State Benefit				43,757
System Design Cost	226,008		30.15% Overhead				77,959
TOTAL Implementation Study cost	$730,800		Sub Total, (12 mo.)				$336,528
			Add: 6 months				168,264
			18 Month Equivalent				$504,792

*Estimated on the basis of the third step within each salary range.

Exhibit C

SYSTEM DESIGN COSTS

Personnel:	
Staff Service Analyst (3 m.y. @ $22,745/yr)	$ 68,235
Associate DP Analyst (1 m.y. @ $27,662/yr)	27,662
Programmer II (4 m.y. @ $22,745/yr)	90,980
DP Technician (1 m.y. @ $16,171/yr)	16,171
Training (.5 m.y. @ $22,745/yr)	11,373
Total Personnel Costs	$ 214,421
Hardware:	
2 - Disc Packs (@ $375/ea.)	$ 750
PT&T Line Installation Charge	2,725
PT&T Data Set Installation Charge	6,112
Training (travel, per diem)	2,000
Total Hardware Costs	$ 11,587
Total System Design Cost	$ 226,008

Exhibit D

LABOR FOR DATA SYSTEM SUPPORT

Annual Costs:

*Personnel:

Staff Service Analyst (.5 m.y. @ $22,745/yr)	$ 11,373
Programmer II (1 m.y. @ $22,745/yr)	22,745
DP Technician (.3 m.y. @ $16,171/yr)	4,851
Computer Operator (5 m.y. @ $16,171/yr)	80,855
Clerk II (1 m.y. @ $12,128/yr)	12,128
Total Personnel Costs	$ 131,952

*Mid-Range, includes Staff Benefits and 30.15% Overhead.

Exhibit E

ADMINISTRATIVE ADJUDICATION STAFFING AND SALARY SUMMARY FIELD OPERATIONS

	Estimated Volume of Traffic Infractions	Senior Hearing Officer	Staff Hearing Officer	Hearing Officer	Hearing Room Clerk	Information Clerk	Cashier	Office Manager	Central Office Clerical Staff	TOTAL PERSONNEL	Number of Offices	Number of Justice Courts
Area 1	1,241,000	1	5	30	32	15	15	15	60	173	15	0
2	818,550	1	5	19	19	10	11	9	50	124	10	30
3	210,800	1	2	4	5	3	3		12	30	3	19
4	188,700		1	4	4	2	3	1	11	26	2	34
5	129,200		1	3	2.5	1	1.5	1	10	20	1	28
6	631,550	1	7	16	17	9	9	9	35	103	8	0
7	173,400		1	5	4	1	2	2	13	28	2	31
8	119,850		1	4	4	3	3	1	5	21	3	21
9	68,850		1	3	2		1		6	13	1	33
	3,581,900	4	24	88	89.5	44	48.5	38	202	538	45	
Monthly Salary*		$ 1,846	$ 1,674	$ 1,519	$ 734	$ 666	$ 666	$ 933	$ 605			
Annual Salary		22,152	20,088	18,228	8,808	7,992	7,992	11,196	7,260			
Total Annual Wage		$ 88,608	$482,112	$1,604,064	$788,316	$351,648	$387,612	$425,448	$1,466,520			

Total Field Operation Annual Wage Cost	$5,594,328
Plus	
Staff Benefit 20.37%	1,139,565
Overhead 30.15%	1,686,690
	$8,420,583

*Estimated on the basis of the third step within each pay scale.

DMV EQUIVALENT

Senior Hearing Officer	=	Staff Services Manager II
Staff Hearing Officer	=	Staff Services Manager I
Hearing Officer	=	Associate Analyst (DIA III & Legal Counsel)
Hearing Room Clerk	=	Clerk Typist, Range C
Information Clerk	=	Clerk II
Cashier	=	Cashier Clerk II
Office Manager	=	Supervising Clerk I
Central Office Clerical	=	Clerk Typist I

Exhibit F

MISCELLANEOUS EXPENSES

Training	
538 field personnel	
at an average of 5 days per person = 2690	
2690 training days	
@15 persons per class = 180	
180 classroom days @	
$250 per classroom day =	$ 44,833
Forms	100,000
Travel and Mileage	30,000
Postage	
FTA and Plea Reject	123,000
	$297,833
Or Approximately	$300,000 per year

Exhibit G

FURNITURE AND OFFICE EQUIPMENT

Purchase (See Figure G Detail)	
Headquarters -	
17 @ $946	$ 16,082
8 @ $1257	10,056
3 @ $434	1,302
Field Office -	
154 @ $946	$145,684
346 @ $434	150,164
38 @ $1257	47,766
Office Equipment -	
45 @ $1000	$ 45,000
45 @ $178	8,010
90 @ $1519	136,710
TOTAL Purchase	$560,774
Lease	
Recording Equipment 45 machines at $4375 per year	$196,875
EDP	871,733
	$1,068,608

Exhibit G (Cont'd)

DEPARTMENT OF MOTOR VEHICLES
OFFICE NEEDS FOR ADMINISTRATIVE ADJUDICATION STAFF
OFFICE EQUIPMENT PURCHASES = ONE TIME COSTS -
GENERAL OFFICE EXPENSE = ANNUAL EXPENSE

	Cost as of 1979-80 FY	Profes-sional	Clerical Typist-Steno	Clerical Non-Typing
General Office Expense	$152	$152	$152	$152
Desk 30 x 60	240	240	-	240
Desk Typist	298	-	298	-
Chair Swivel	59	59	-	-
Chair Clerical	42	-	42	42
Table 30 x 60	141	141	-	-
Bookcase	107	107	-	-
Chair Side (2 for each Professional)	39	78	-	-
File - 5 Drawer Legal	167	167	-	-
Typewriter - Electric	765		765	
		$946	$1,257	$434
		+ PLUS Items Below		
Adding Machine	178	One for each Adjudication Office and Headquarters (One Time)		
File - 80 Drawer	1,519	Two for each Adjudication Office (One Time)		
Recording Equipment	4,375 yrly	One for each Adjudication Office (Annually)		
Hearing Room Office Equipment	1,000	One thousand Dollars for each Hearing Room (One Time)		

Exhibit H

EDP Hardware Lease Cost

Hardware:

1 - 8440 Disc. Unit w/controller (@ $1,454/mo.)	$ 17,448
47 - Area Hq. Video Data Terminals (Intelligent Terminals) with associated hardware (@ $13,041/mo. & $2,617/mo. maint.)	187,896
135 - Hearing Office Video Data Terminals with associated hardware (@ $19,530/mo. & $6,480/mo. maint.)	312,120
26 - PT & T Data Sets (1200 BPS) (@ $500.50/mo.)	6,006
90 - PT & T Data Sets (300 BPS) (@ $1,462.50/mo.)	17,550
2 - CCM (Communications Control Multi-Channel) (@ $900 each/mo.)	21,600
58 - 720 Buffers (@ $45 each/mo.)	31,320
PT & T Line Charges (@ $14,363/mo.)	172,356
Central Processor Unit Time	100,519
EDP Notice of Failure to Answer (500,000/yr. @ $5.40/1,000)	2,700
EDP Failure to Appear Suspension Notice (168,000/yr. @ $13.20/1,000)	2,218
Total Hardware Costs	$871,733

Exhibit H (Cont'd)

Estimated EDP Hardware Costs for Administrative Adjudication Pilot Study

Area 1:

One Time Hardware Costs:	
PT & T Line Installation Charge	$ 105
PT & T Data Set Installation Charge	262
	$ 367
Annual Hardware Costs	
4 - Area Hq. Video Data Terminals with associated hardware (@ $1,032/mo. & $209/mo. maint.)	$14,892
6 - Hearing Office Video Data Terminals with associated hardware (@ $868/mo. & $288/mo.)	13,872
2 - PT & T Data Sets (1200 BPS) (@ $40/mo.)	480
6 - PT & T Data Sets (300 BPS) (@ $65/mo.)	780
3 - 720 Buffers (@ $45/mo.)	1,620
PT & T Line Charges	68
CPU Charges	5,000
Forms	300
One Time Costs	367
Total	$37,379

Exhibit I

SAVINGS TO CURRENT

DEPARTMENT OF MOTOR VEHICLES OPERATIONS

Annual Savings:

Personnel:

Key Data Operator (23.5 m.y. @$12,747)	$299,555
Clerk II (11.7 m.y. @$12,128)	141,898
	$441.453

Hardware:

12 - 6051 Video Data Terminals (State owned - $11 per mo. maint.)	$ 132
1 - 6077 Controller (@$15,000/yr.)	15,000
	$15,132

Driver Improvement Scheduling:

Waring letters $.72 x 133,000	$ 95,760
Group Educational Meeting $2.67 x 49,700	132,669
Informal Hearing Scheduling (216 x 26,800)	57,888
	$286,317

TOTAL	$742,902

742,902 ÷ 3.7 million infraction convictions = $.20 per infraction.

Exhibit J

ADMINISTRATIVE ADJUDICATION EDP NOTICE TO APPEAR AND ANSWER UPDATE SYSTEM

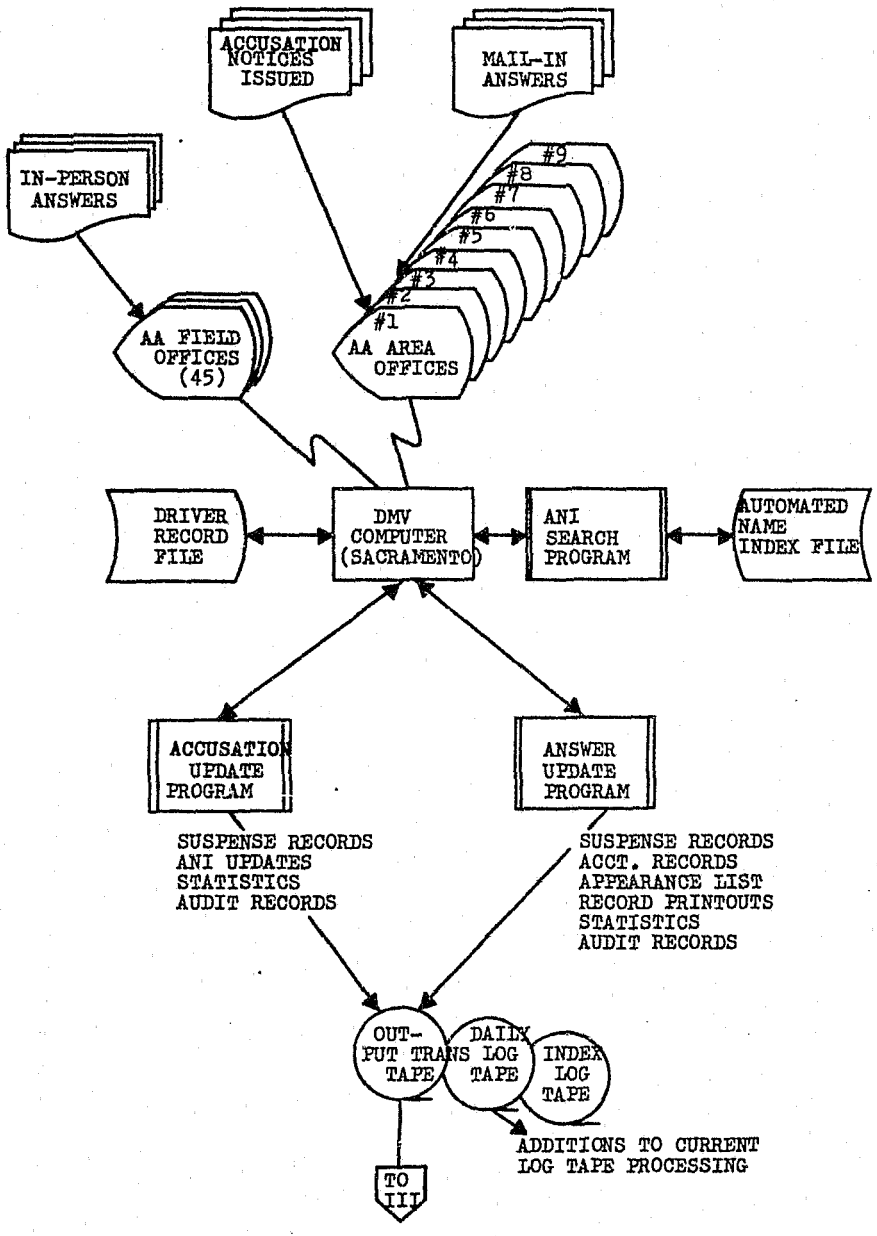


Exhibit J (Continued)

ADMINISTRATIVE ADJUDICATION POST HEARING UPDATE SYSTEM

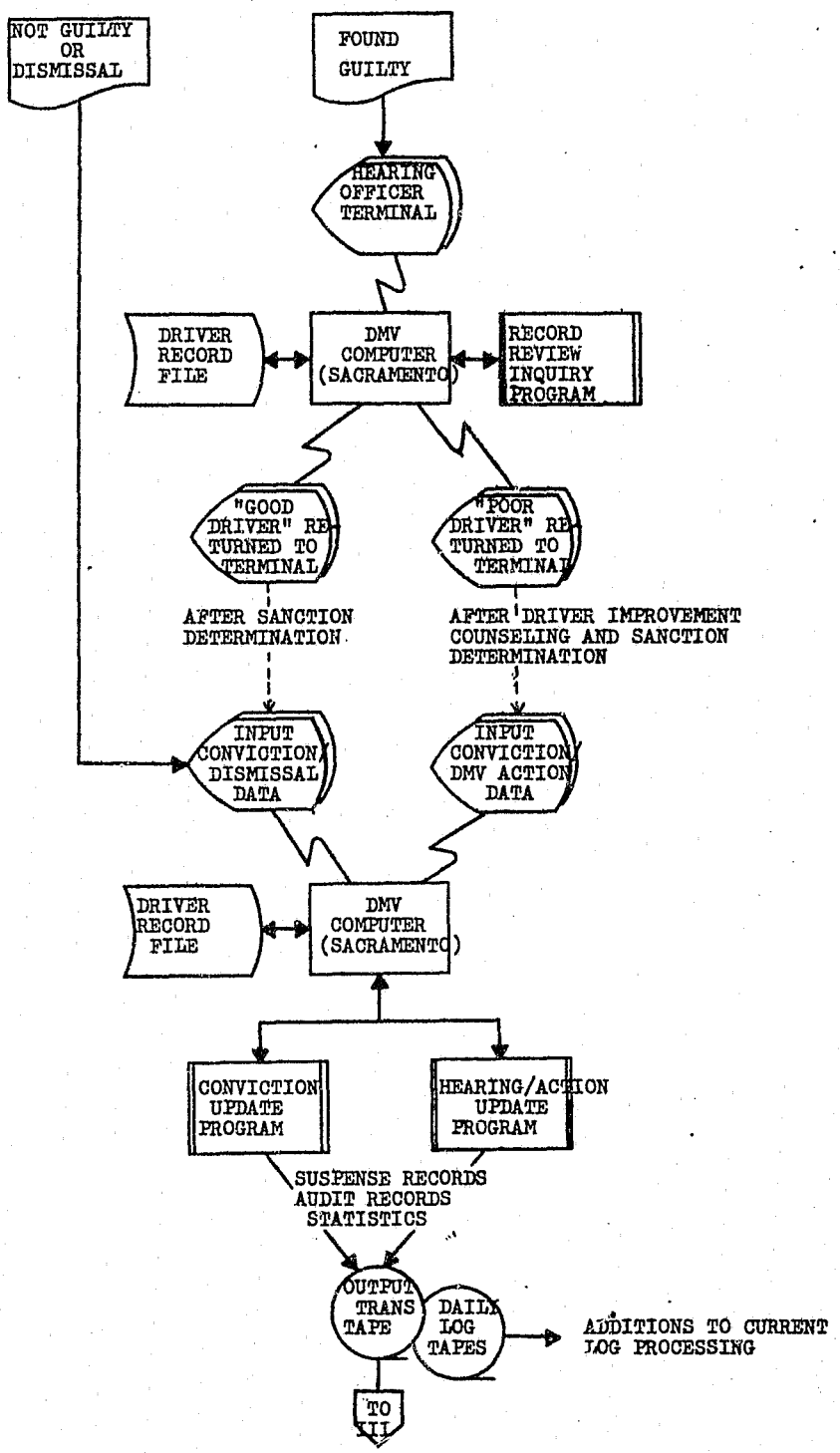


Exhibit J (Continued)

OUTPUT TRANSACTION TAPE (OTT) SYSTEM

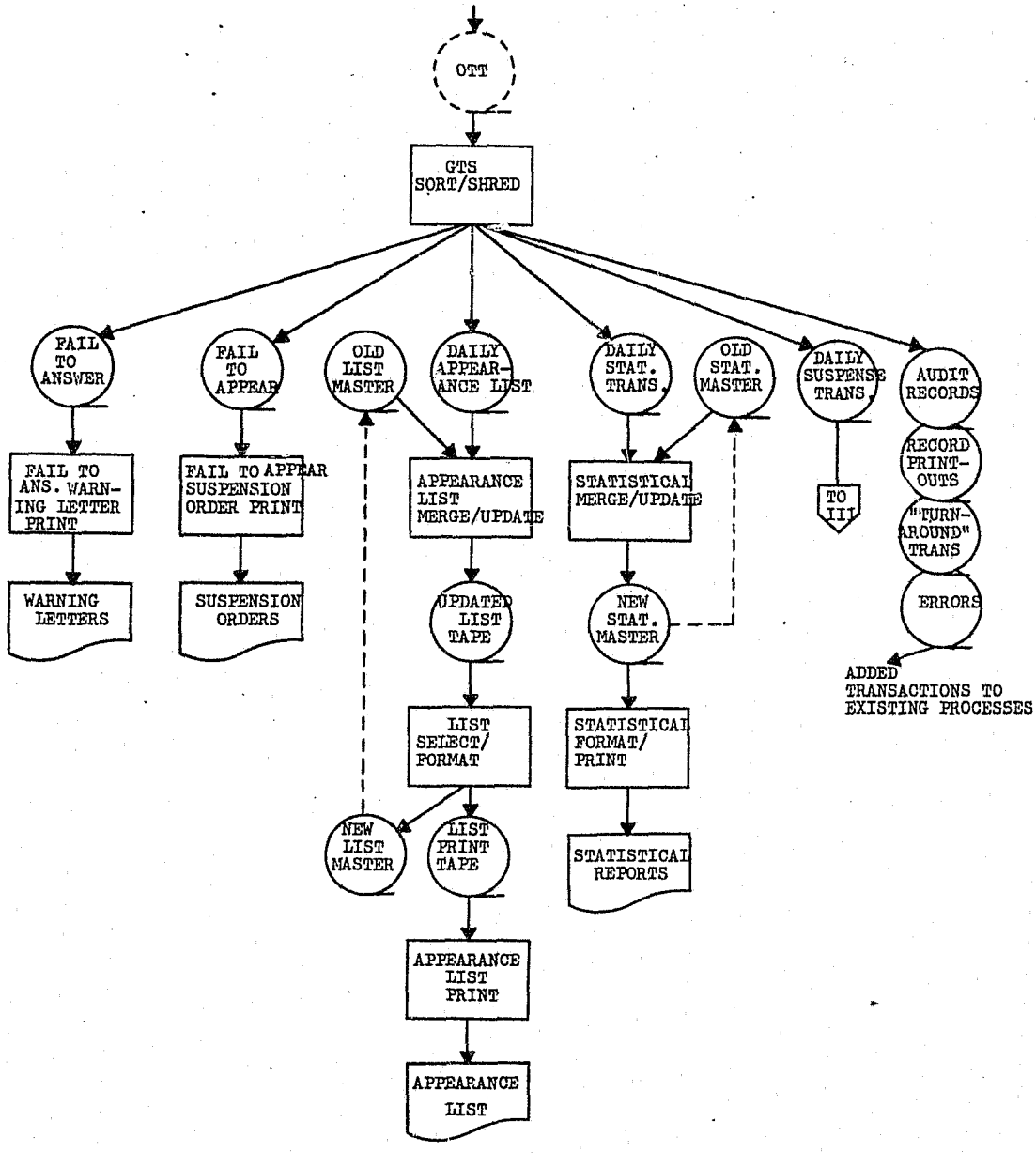


Exhibit J (Continued)

DAILY SUSPENSE FILE SYSTEM

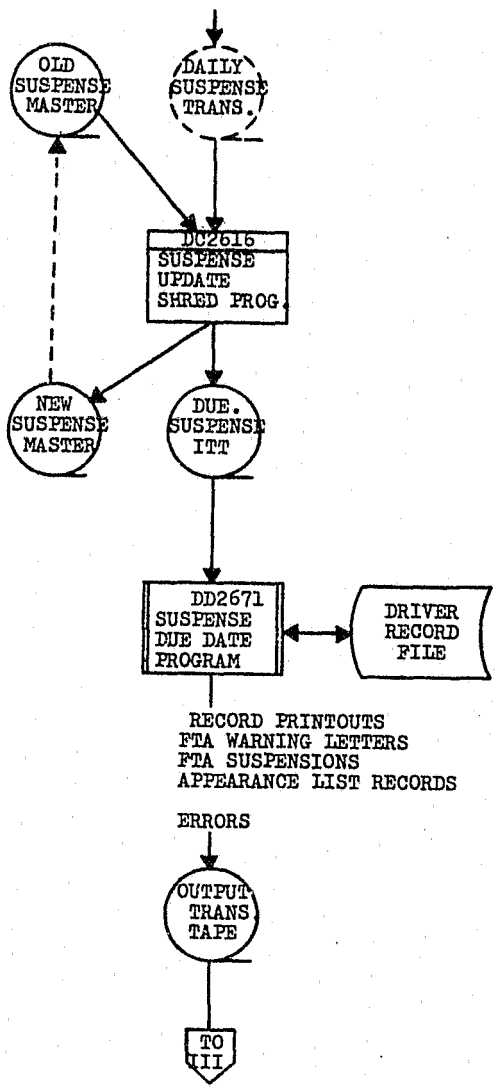


Exhibit J (Continued)

ADMINISTRATIVE ADJUDICATION APPEAL PROCESS

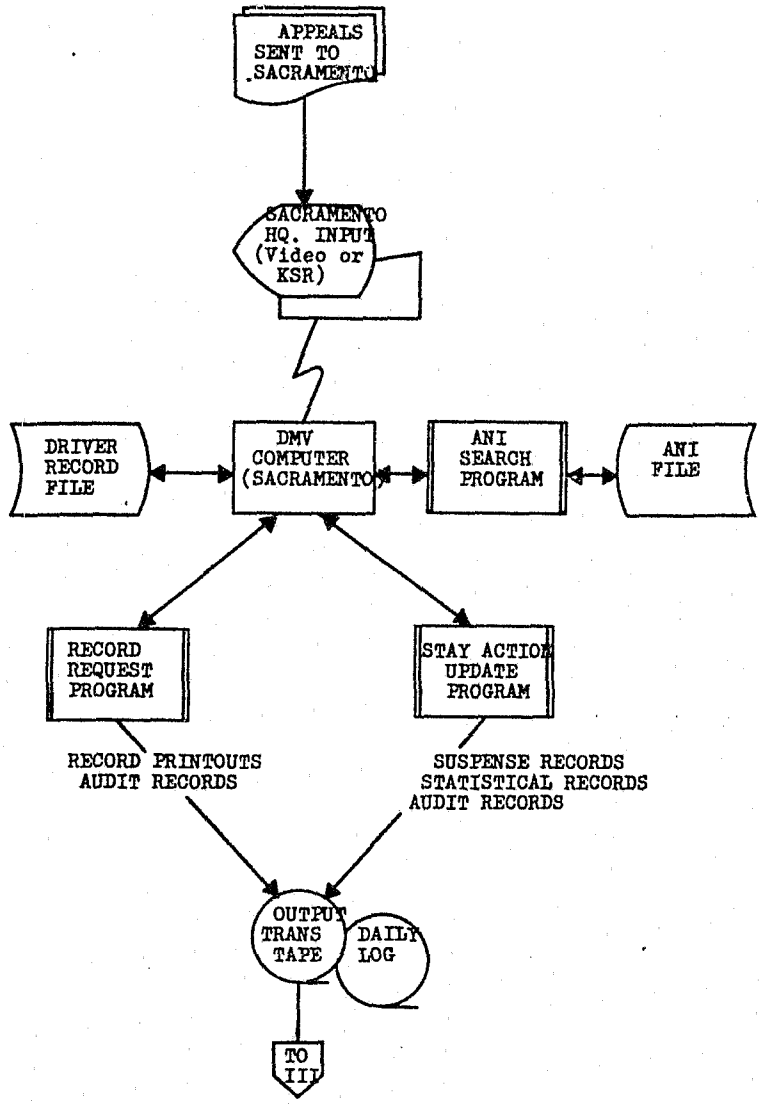
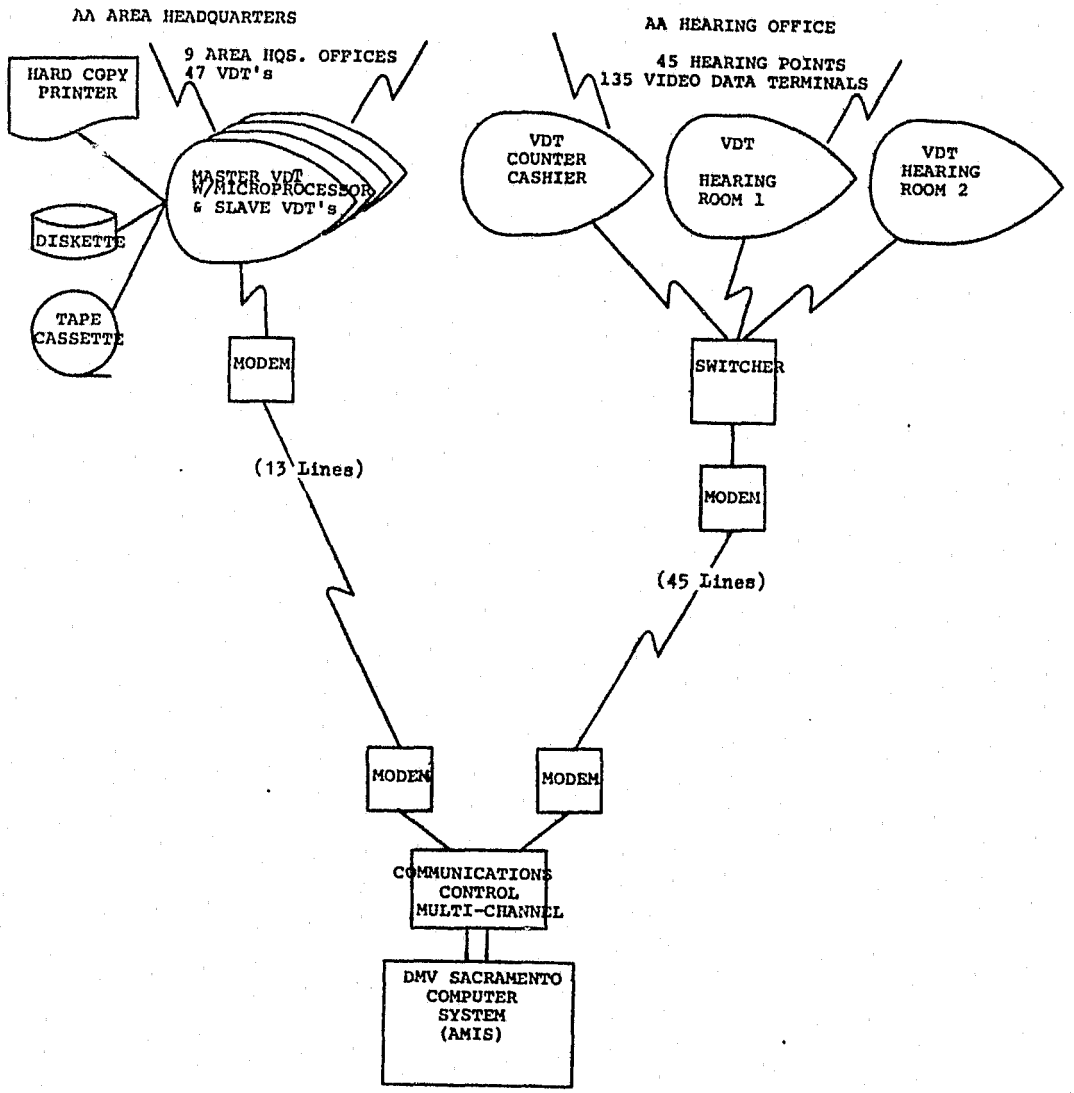


Exhibit J (Continued)

MODEL TELECOMMUNICATIONS SYSTEM



CONTINUED

3 OF 4

Exhibit J (Continued)

ESTIMATED DAILY WORKLOAD VOLUMES BASED ON 1973-74 CITATIONS FILED BY COUNTY						
	CITATION UPDATES	ANSWER UPDATES	CONVICTION UPDATES	HEARING UPDATES	RECORD INQUIRIES	ANI INQUIRIES
AREA 1:						
Hq. - Los Angeles	5,838	3,917	6	2	6	2,449
15 Hearing Offices	-	1,221	1,454	290	1,454	669
AREA 2:						
Hq. - San Bernardino	3,850	2,729	178	36	178	1,690
10 Hearing Offices	-	686	817	163	817	376
AREA 3:						
Hq. - Bakersfield	976	739	101	20	101	454
3 Hearing Offices	-	120	142	28	142	65
AREA 4:						
Hq. - Fresno	889	694	118	24	118	426
2 Hearing Offices	-	87	105	21	105	48
AREA 5:						
Hq. - Stockton	608	488	96	19	96	298
1 Hearing Office	-	47	57	11	57	26
AREA 6:						
Hq. - Oakland	2,971	2,006	18	4	18	1,249
8 Hearing Offices	-	609	725	145	725	332
AREA 7:						
Hq. - Sacramento	817	636	105	21	105	389
2 Hearing Offices	-	83	99	20	99	46
AREA 8:						
Hq. - Fairfield	562	406	35	7	35	252
3 Hearing Offices	-	89	106	21	106	50
AREA 9:						
Hq. - Red Bluff	322	275	70	14	70	168
1 Hearing Office	-	9	10	2	10	5
Daily Total	16,833	14,841	4,242	848	4,242	8,992

Exhibit J (Continued)

PROBABLE ADMINISTRATIVE ADJUDICATION OFFICE LOCATIONS
AND PROJECTED REMOTE TERMINAL REQUIREMENTS

Location (*Indicates Same Location as Headquarters)	No. of Devices Needed
Area 1	
Area Headquarters - Los Angeles (2 shifts) =	12
AA Hearing Office Locations:	
*Los Angeles, Bellflower, Culver City, Glendale, Hawthorne, Long Beach, Montebello, Pasadena, San Fernando, Santa Monica, Torrance, Van Nuys, West Covina, Whittier, Winnetka	
15 Hearing Offices @ 3 Terminals Each =	45
Area 2	
Area Headquarters - San Bernardino (2 shifts) =	8
AA Hearing Office Locations:	
San Diego - No., San Diego - So., El Cajon, Oceanside, Santa Ana, Orange, Laguna Beach, Newport Beach, *San Bernardino, Riverside	
10 Hearing Offices @ 3 Terminals Each =	30
Area 3	
Area Headquarters - Bakersfield (1 shift) =	5
AA Hearing Office Locations:	
Santa Barbara, *Bakersfield, Ventura	
3 Hearing Offices @ 3 Terminals Each =	9
Area 4	
Area Headquarters - Fresno (1 shift) =	4
AA Hearing Office Locations:	
*Fresno, Salinas	
2 Hearing Offices @ 3 Terminals Each =	6
Area 5	
Area Headquarters - Stockton (1 shift) =	3
AA Hearing Office Location:	
*Stockton	
1 Hearing Office @ 3 Terminals =	3

Exhibit J (Continued)

PROBABLE ADMINISTRATIVE ADJUDICATION OFFICE LOCATIONS
AND PROJECTED REMOTE TERMINAL REQUIREMENTS (CONT.)

Location (*Indicates Same Location as Headquarters)	No. of Devices Needed
Area 6	
Area Headquarters - Oakland (2 shifts) =	6
AA Hearing Office Locations:	
San Francisco, Santa Clara, San Leandro, San Mateo, *Oakland, Richmond, San Jose, Berkeley	
8 Hearing Offices @ 3 Terminals Each =	24
Area 7	
Area Headquarters - Sacramento (1 shift) =	4
AA Hearing Office Locations:	
Sacramento - No., *Sacramento - So.	
2 Hearing Offices @ 3 Terminals Each =	6
Area 8	
Area Headquarters - Fairfield (1 shift) =	3
AA Hearing Office Locations:	
Santa Rosa, San Rafael, *Fairfield	
3 Hearing Offices @ 3 Terminals Each =	9
Area 9	
Area Headquarters - Red Bluff (1 shift) =	2
AA Hearing Office Location:	
*Red Bluff	
1 Hearing Office @ 3 Terminals Each =	3
TOTAL PROJECTED REMOTE TERMINALS REQUIRED	182

APPENDIX K

1. Senate Resolution No. 160 (Dolwig) 1968

2. Senate Concurrent Resolution No. 40 (Alquist) 1975

Senate Resolution No. 160

Relating to a study of functions to control and reduce number of accidents on California highways.

WHEREAS, It has come to the attention of the Members of the Senate that 4,883 people were killed, and 233,834 people were injured as a result of collisions and accidents on California highways in 1967; and

WHEREAS, Traffic enforcement programs have been implemented and increased by the California Highway Patrol and other enforcement bodies; and

WHEREAS, The courts of the State of California have made a notable effort to improve the processing of traffic cases and have provided support for traffic enforcement programs; and

WHEREAS, The Department of Motor Vehicles has maintained driver records reflecting abstracts of conviction on traffic violations and the occurrence of accidents; and

WHEREAS, The Department of Motor Vehicles has acted against the driving privilege of drivers who have accumulated bad driving records by placing the licensee on probation or suspending or revoking the driving privilege of such drivers; and

WHEREAS, Deaths, injuries and property damage have continued to increase in spite of the efforts of these agencies; now, therefore, be it

Resolved by the Senate of the State of California, That the Department of Motor Vehicles shall make an in-depth study of the functions performed by the traffic courts, traffic enforcement agencies and the Department of Motor Vehicles in relation to the control and reduction of the number of accidents, injuries and the amount of property damage occurring on California highways; and be it further

Resolved, That the study shall consider the need for improvement or changes in the relationships between the agencies concerned with safety on the highways; and be it further

Resolved, That the study shall also consider the changes needed in the traffic laws, driver licensing laws and other laws related to highway safety; and be it further

Resolved, That the California Highway Patrol, courts and other enforcement agencies are requested to cooperate with the Department of Motor Vehicles in furnishing information necessary to complete its study; and be it further

Resolved, That the Department of Motor Vehicles shall submit a report of this study to the Senate not later than 30th calendar day of the 1969 Regular Session; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Motor Vehicles.

Referred to Committee on Transportation.

By Senator Dolwig

Senate Concurrent Resolution No. 40

RESOLUTION CHAPTER 86

Senate Concurrent Resolution No. 40—Relative to administrative adjudication of traffic offenses.

[Filed with Secretary of State August 25, 1975.]

LEGISLATIVE COUNSEL'S DIGEST

SCR 40, Alquist. Traffic offenses: administrative adjudication study.

Existing law provides for the trial of traffic offenses by courts.

This measure would request the Department of Motor Vehicles, with the cooperation of the Judicial Council, and in consultation with the League of California Cities and the County Supervisors Association of California, to study the feasibility of implementing a system of administrative adjudication of traffic offenses in specified areas and to report thereon to the Governor and the Legislature by April 1, 1976. This measure would also request the Legislature, the Judicial Council, Chairman of the League of California Cities, and the County Supervisors Association of California to appoint an advisory committee to study specified aspects of administrative adjudication, to review the department's progress in conducting the feasibility study, and to submit its own recommendations to the Governor and Legislature by April 1, 1976.

WHEREAS, Over three-quarters of the nonparking filings in California's municipal courts involves processing more than 3.8 million moving traffic violations annually; and

WHEREAS, This steadily growing burden has made the prompt and judicious handling of criminal and civil cases increasingly difficult; and

WHEREAS, There is no persuasive evidence that the traditional criminal court process significantly deters traffic violators; and

WHEREAS, These problems continue despite the institution of numerous improvements by the California judicial system since 1950, including a uniform traffic citation, the statutory reclassification of many traffic violations from misdemeanors to infractions, and the experimental use of traffic commissioners by several courts to provide adjudication of traffic infractions; and

WHEREAS, The State of New York, faced with similar problems, adopted in 1970 an Administrative Adjudication Program which permits the Municipal Courts of New York City, Rochester, and Buffalo to retain their jurisdictions over serious traffic offenses such as vehicular homicide, drunk driving, and reckless driving, while providing for the transfer of traffic infractions such as speeding, improper lane change, and running red lights, to hearing officers in

New York's Department of Motor Vehicles for administrative adjudication; and

WHEREAS, Following four years of operation, New York reports that its program is handling over one million traffic cases annually, has contributed to the elimination of most of the backlog in the courts, and substantially speeded up the processing of traffic cases, thus promoting traffic safety through the prompt application of administrative remedies to convicted motorists, while at the same time protecting their legal rights; and

WHEREAS, On February 5, 1975, the United States Department of Justice designated New York's administrative adjudication program as an "exemplary project" which has significantly improved the operation and quality of the justice system and has demonstrated cost effectiveness, citing the use of trained hearing officers, the efficiency of a sophisticated computerized information system, and the effectiveness of merging the licensing agency and traffic offense adjudication agency; and

WHEREAS, In planning the administrative adjudication program, the Governor of New York appointed a special task force of distinguished lawyers, jurists, and representatives of the motoring public to develop a model for the program to follow; and

WHEREAS, Expeditious disposition of minor traffic cases is vital to California's highway safety programs and the problems of dealing with chronic traffic offenders; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Department of Motor Vehicles is hereby requested to submit to the Legislature and the Governor by April 1, 1976, in cooperation with the Judicial Council, a feasibility study for implementing administrative adjudication of traffic cases in both urban areas having populations greater than 250,000 and areas having populations less than 250,000; and be it further

Resolved, That the Judicial Council is hereby requested to cooperate with and assist the department in making the feasibility study and in preparing the required report; and be it further

Resolved, That the Department of Motor Vehicles and the Judicial Council, in conducting the feasibility study, consult with the League of California Cities and the County Supervisors Association of California, particularly with respect to evaluating the impact of administrative adjudication on the mechanisms and costs of local law enforcement; and be it further

Resolved, That the Legislature, the Chairman of the Judicial Council, the League of California Cities, and the County Supervisors Association of California are hereby requested to appoint an Administrative Adjudication Advisory Committee comprised of nine distinguished representatives from the fields of law and government and the private sector to consider all of the basic elements contained in the New York program, experience elsewhere in the United States, and the status of judicial and administrative adjudication in

California with related cost and benefit factors; and to cooperate with the department and the council in establishing guidelines for the study, including expressly the citation issuance and case preparation process, the arraignment, hearing, and decision process, the examination of prior record and sanction process, and the review and appeals process. One member of the committee shall be the Director of Motor Vehicles who shall serve as the chairman of the committee. One member of the committee shall be appointed jointly by the League of California Cities and the County Supervisors Association of California. Two members of the committee shall be appointed by the Senate Committee on Rules. Two members of the committee shall be appointed by the Speaker of the Assembly. Three members of the committee shall be representatives of the courts appointed by the Chairman of the Judicial Council; and be it further

Resolved, That the potential integration of administrative adjudication, driver licensing, and postlicensing control functions at Department of Motor Vehicles field office sites be evaluated; and be it further

Resolved, That the Administrative Adjudication Advisory Committee be directed by the Legislature and the Chairman of the Judicial Council to review periodically the department's progress in conducting the feasibility study and submit comments and recommendations to the Governor and the Legislature by April 1, 1976; and be it further

Resolved, That the feasibility study be conducted with available planning resources within the Department of Motor Vehicles and the Administrative Office of the Courts. Members of the administrative advisory committee shall be reimbursed actual and necessary expenses by the department and the Administrative Office of the Courts from available resources; and be it further

Resolved, That, if implemented, the administrative adjudication system should be self-supporting through the collection of fines from traffic violators; and that after the reimbursement of system startup and operating costs, the system should provide increased net revenue distributions annually to local agencies from the General Fund; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Senate Committee on Rules, the Speaker of the Assembly, the Director of Motor Vehicles, the Chairman of the Judicial Council, the League of California Cities, and the County Supervisors Association of California.

O

END